

13-2784-cv

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

CHEVRON CORPORATION,

PLAINTIFF-APPELLEE,

V.

NON-PARTY JOHN DOE SIMEONTEGEL@HOTMAIL.COM, NON-PARTY JOHN DOE
MEY_1802@HOTMAIL.COM, NON-PARTY JOHN DOE PIRANCHA@HOTMAIL.COM, NON-
PARTY JOHN DOE DURUTI@HOTMAIL.COM,

MOVANTS-APPELLANTS,

V.

STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER, DONZIGER &
ASSOCIATES, PLLC, JAVIER PIAGUAJE, HUGO GERARDO, CAMACHO NARANJO,

DEFENDANTS.

On Appeal from the United States District Court
for the Northern District of New York
Honorable Lewis A. Kaplan, U.S. District Judge

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INTRODUCTION

This appeal represents a new and disturbing by-product of the long-running “Chevron-Ecuador” litigation: an incursion into the First Amendment rights of individuals who are not parties to that litigation. And indeed, the district court’s order challenged here, requiring Microsoft to disclose nine-years worth of email data, including the true identities of those who have spoken critically of Chevron, as well as data that would allow Chevron to discover their movements and associations, is a threat not only to the Appellants subject to Chevron’s harassing subpoena, but also to the rights of all email users in the United States and abroad. Should the district court’s order be permitted to stand, a litigant like Chevron can use a civil, third-party subpoena to Internet providers to rob non-parties of their anonymity, locational, and associational privacy based not on some showing that the targets have done anything wrong, but merely upon a claim that *other people* with whom who they associated engaged in an illegal civil conspiracy.

Email is a tremendously powerful tool that allows people around the world to communicate privately and organize for political causes. The strict tests developed by the Supreme Court that apply when civil discovery implicates the First Amendment rights of political organizers to both speak anonymously and associate apply to email communications in full force. Those tests allow

production of material that is actually needed for a party to present his case, while preventing the use of civil discovery to intimidate and create chilling effects.

This appeal arises from a Federal Rule of Civil Procedure 45 subpoena issued by Chevron Corporation (“Chevron”) to Microsoft Corporation (“Microsoft”) in the Northern District of New York. Chevron seeks documents identifying thirty non-party Hotmail email account holders, as well as the computer usage information associated with the creation of their accounts and every subsequent login to each account, over a nine-year period. In addition to linking the non-parties’ identities to their speech, the information sought by Chevron could reveal the movements and the personal and political associations of these thirty non-parties over those same nine years. The subpoena thus clearly violates the First Amendment.

Appellants, four of the non-parties targeted by Chevron, have moved to quash the subpoena on behalf of themselves and the other twenty-six email users, asserting their First Amendment rights to anonymous speech and association and challenging the subpoena’s scope.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this case pursuant to 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291. *See also In re Air Crash at Belle Harbor, New York on November 12, 2001*, 490 F.3d 99, 106 (2d

Cir. 2007) (“[T]he holder of an asserted privilege may immediately appeal the enforcement of a subpoena when the subpoena is directed at another person who does not object to providing the testimony or documents at issue.”).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues presented by this appeal are:

1. Whether Appellants have standing to challenge Chevron’s subpoena on their own behalf and on behalf of those who lack the knowledge, resources, or wherewithal to assert their own interests.
2. Whether by seeking the identities, movements, and associations of these non-parties over the course of nine years, Chevron’s subpoena to Microsoft violates the non-parties’ First Amendment right to anonymous speech and association.
3. Whether Chevron’s subpoena to Microsoft is facially overbroad.

STATEMENT OF THE CASE

Non-Party John Doe Movants’ (the “Appellants”) appeal from Judge Lewis A. Kaplan’s Orders of June 25, 2013 and July 29, 2013, substantially denying Appellants’ motion to quash the subpoena issued by Chevron to Microsoft,

Chevron Corp. v. Donziger, No. 1:12-MC-00065-LAK-CFH, (N.D.N.Y. July 29, 2013), Joint Appendix (“JA”) 234-45 and JA 252-55.

On September 18, 2012, Chevron issued a sweeping subpoena to Microsoft, demanding identity and email usage information associated with 30 Hotmail email accounts, including four belonging to Appellants. On October 22, 2012, Appellants moved to quash the subpoena in its entirety, on the grounds that the subpoena violated Appellants’ First Amendment rights, was facially overbroad, and sought a large amount of wholly irrelevant information. JA 1-3. On January 23, 2013, the district court issued an order to show cause why the Appellants should not be required to submit to the Court a declaration revealing their true identities. JA 212-13. On February 13, 2013, the district court ordered the Appellants to submit to the court the original signed declarations filed by Appellants and a declaration identifying each individual on behalf of which the motion to quash was made. JA 218-24.

By Memorandum Opinion, on June 25, 2013, the district court denied the Appellants’ motion to quash Chevron’s subpoena, concluding that none of the Appellants had demonstrated they were entitled to First Amendment protection because they were not United States citizens or legal residents and concluding that the Appellants lacked standing to move to quash on First Amendment grounds. JA 234-45.

Appellants timely appealed the district court's opinion. JA 248-51.

On July 9, 2013, the Appellants filed a Motion for Reconsideration, arguing that the district court had erred by assuming that none of the Appellants were citizens or U.S. residents and by giving inadequate consideration to third-party standing. On July 29, 2013, the district granted the motion for reconsideration with respect to one of the Appellants and denied the motion in all other respects. JA 252-55. With respect to the single Appellant, the district court narrowed the time period covered by the subpoena to 2005 to 2008 after concluding that Chevron had not demonstrated "any compelling need" for IP logs outside that timeframe. *Id.* The district court concluded that giving Chevron access to information beyond that three-year timeframe "could intrude upon certain protected activities" in which John Doe may have engaged. *Id.*

On August 17, 2013, Appellants timely filed an Amended Notice of Appeal to include the district court's July 29, 2013 Order. JA 256-59.

STATEMENT OF FACTS

This case arises from contentious environmental litigation that has been ongoing for two decades. In 1993, a group of Ecuadorian citizens sued Texaco, Inc. in the United States for widespread pollution and other damage allegedly caused by Texaco in a previously pristine corner of the Amazon rainforest. Chevron Corporation acquired Texaco in 2001 and successfully fought to move the

litigation to Ecuador's judicial system in 2003. In 2011, an Ecuadorian court entered a judgment of approximately \$19 billion against Chevron. That judgment was upheld on appeal.

On February 1, 2011, Chevron filed suit in the Southern District of New York against more than 50 lawyers, organizations, plaintiffs, and other individuals involved in the case in Ecuador, alleging that they obtained the judgment through fraud and other illegal means. Complaint, *Chevron Corp. v. Donziger, et al.*, No. 11-cv-0691 (LAK) (S.D.N.Y. Feb. 1, 2011). That case is the source of the subpoena at issue here. In that case, the trial court limited discovery to those five specific allegations for which Chevron had met its *prima facie* burden: Chevron's claims that (1) representatives of defendants bribed the Ecuadorian judge and, as part of the deal, wrote the judgment for the judge's signature; (2) at an earlier stage of the Ecuadorian litigation, the defendants had coerced the then-presiding Ecuadorian judge to terminate environmental inspections and replace that process with a single expert of defendants' choosing; (3) the report eventually submitted by that expert as his independent work was actually substantially written by defendants or their agents; (4) once the improprieties regarding that report surfaced, defendants submitted a deceptive account of their relationship with the expert in a Section 1782 proceeding in Colorado; and (5) at an even earlier stage of the Ecuadorian proceeding, defendants had submitted an environmental report to

the Ecuadorian court over the signature of their expert, which the expert neither adopted nor agreed with. *See Chevron Corp. v. Donziger*, Case No. 11-cv-691 (LAK), 2013 WL 1087236 (S.D.N.Y. Mar. 15, 2013).¹

A. Chevron’s September 19, 2012 Subpoenas to Google, Yahoo!, and Microsoft.

On September 19, 2012, Chevron served subpoenas on Google, Yahoo!, and Microsoft demanding identity and email usage information associated with 101 email accounts from 2003 to the present. The subpoena to Microsoft was issued by the United States District Court for the Northern District of New York, and Appellants’ motion to quash is the subject of this appeal.²

Microsoft attempted to notify the affected account holders about the subpoena by email, though it is unclear on the record considered by the district court how many received actual notice in time to challenge the subpoena. For example, the owner of the email account duruti@hotmail.com was only able to secure counsel and join the Appellants’ motion to quash after it was filed and

¹ Chevron has not alleged any of these claims against the Appellants in the underlying action, nor has it claimed that the discovery sought here is needed to prove that Appellants participated in any of the five areas in which Judge Kaplan found Chevron met its *prima facie* burden.

² The subpoenas to Google and Yahoo! were issued by the District Court for the Northern District of California. A number of the targets of those subpoenas separately moved to quash them in that court. An appeal from that court’s order is currently pending in the Ninth Circuit. That court has partially stayed production, citing “a substantial question on the merits under the First Amendment.” Order at 2, *Chevron v. Donziger*, No. 13-16920 (9th Cir. October 25, 2013).

during the pendency of the motion. JA 214. In addition, at least five of the thirty addresses targeted by Chevron appear to be nonfunctional. JA 215.

The subpoena to Microsoft specifically seeks the identity of the owner of, and email usage records associated, with 30 email addresses, including all documents related to:

- (A) identity of the users of all of the listed email addresses, including but not limited to documents that provide all names, mailing addresses, phone numbers, billing information, date of account creation, account information and all other identifying information associated with the email address under any and all names, aliases, identities or designations related to the email address; [and]
- (B) the usage of all of the listed email addresses, including but not limited to documents that provide IP logs, IP address information at time of registration and subsequent usage, computer usage logs, or other means of recording information concerning the email or Internet usage of the email address[.]³

An Internet Protocol address (“IP address”), logs of which are sought in part (B), is a unique numeric value used to identify every computer, or set of computers, on the Internet. JA 237-38. Portable devices such as tablets, smartphones, or laptops are often assigned different IP addresses depending on the location of the device. *Id.*

³ Despite the broad wording of category (B), Chevron’s attorneys have clarified that this description was not intended to include any contents of communications or email header information, which would reveal the names and IP (Internet Protocol) addresses of senders and recipients of messages.

Many websites, such as Microsoft Hotmail, maintain logs of the IP addresses associated with every login to the site, including data such as the time and date of the login. *Id.* IP addresses are assigned to Internet Service Providers (“ISPs”) in blocks of addresses. *Id.* Because of the way they are assigned, an investigator can use an online service to obtain information about the assignee of any IP address. *Id.* In some cases, an IP address can be associated with an exact physical location, although in most instances, it is only possible to associate an IP address with an ISP’s regional office. *Id.* Where exact correlation to a physical address is not apparent, a litigant may subpoena the corresponding ISP to develop a detailed picture of a person’s location and movements. *Id.*

To summarize, if Microsoft still has and were to produce the requested information, Chevron would learn the IP address associated with every login for every account over a nine-year period. Chevron could identify the countries, states, or even cities where the users logged into the accounts, and perhaps, in some instances, could determine the actual building addresses.

Id. at 4-5. When collected in bulk, IP logs would also indicate when two users are physically together, as their computers will likely have the same IP addresses at the same time. By reviewing the IP address information from multiple people, one can often determine whether they are together at a particular point in time. JA 8-9.⁴

⁴ Appellants note that Microsoft has not confirmed on the record whether it actually has a full nine-years worth of IP addresses for each of the 30 individuals and has indicated that it will not know exactly what information it has until it is under an order to produce. Based upon Microsoft’s normal practices, it seems

B. The Non-Party Appellants.

The four Appellants are individuals who have had some connection to the litigation against Chevron in Ecuador or related environmental advocacy. Some individuals have direct connections and others are quite indirect. None is a defendant in the underlying New York action.

The first declaration submitted to the district court in support of Appellants' motion is from Appellant John Doe (the owner of the email account simeontegel@hotmail.com) who had only an indirect connection with the litigation against Chevron. From 2005 to 2008, he worked for a non-profit advocacy organization and engaged in broader advocacy efforts concerning the environmental impact of Chevron's former oil concession in the Amazon.⁵ JA 11. John Doe almost never used his Hotmail account in connection with his advocacy work and instead maintained a separate email account for correspondence related to that campaign. *Id.*

John Doe is now a full-time professional journalist based in Latin America, and his articles have been published in a number of prominent international media outlets. *Id.* He has used his Hotmail account for personal and professional communications for about 13 years. *Id.* Ensuring the privacy of this account is

likely that it does not have nine years for the non-party Appellants. Nonetheless, Chevron has refused to narrow its subpoena; it still seeks the full nine years.

⁵ This brief's use of masculine pronouns to refer to Appellants is generic and should not be construed as an admission of gender.

particularly important to him because he uses it to communicate with sources, and maintaining the confidentiality of that account is an important part of his job. *Id.* As a reporter in Latin America, he works on many stories where his personal security, and the security of his confidential sources, is an issue of great concern. *Id.* John Doe declares that his use of his email account to communicate with his sources would be chilled if Chevron obtained details about his account. JA 12.

John Doe feels harassed by Chevron's attempt to obtain information about his identity and past involvement in his advocacy work. *Id.* John Doe is no longer engaged in that activity, but if Chevron gains access to information about his account, John Doe would be intimidated and deterred from engaging in activism or litigation against Chevron in the future. *Id.* His participation in other political and activism campaigns would be chilled more generally as well. *Id.*

John Doe 2 (the owner of the email account pirancha@hotmail.com) is a full-time environmental journalist. John Doe 2 provided professional public relations services to environmental activists and lawyers working on the Chevron-Ecuador litigation from 2005 to 2010 and continues to perform those functions occasionally on a volunteer basis. JA 217. John Doe 2 has used his Hotmail email account to engage in personal and professional speech since 2005. *Id.* As a professional journalist, John Doe 2 finds it crucial to keep his Hotmail account, location information, and communications times confidential. *Id.* John Doe 2 has

been personally subjected to physical threats during the course of his environmental work in Ecuador. *Id.* He believes that his personal safety, as well as the safety of his family, has been endangered due to his work and that the threats against him were specifically due to his work in opposition to Chevron. *Id.*

The district court held that “[i]n order to establish that they were protected by the First Amendment, it was [Appellants’] burden to demonstrate that those on behalf of whom the argument was made were entitled to its protection.” JA 253. Because they “have not claimed that they are U.S. citizens,” they “failed entirely” in their burden. *Id.*

SUMMARY OF THE ARGUMENT

Chevron seeks to identify Appellants, as well as to track their movements and associations over a nine-year span. The district court made two types of errors in its First Amendment decisions below: it erred in declining to find standing as to most of the Appellants, and it erred in failing to apply the appropriate First Amendment tests even after it found standing as to one of the Appellants.

On standing, the district court erred in holding that only U.S. citizens could have standing to challenge Chevron’s subpoena. The First Amendment protects Appellants, including non-U.S. citizens where, as here, they have substantial connections to this country; Appellants have been brought into this litigation based on their speech and associational activities aimed at Chevron, a U.S. corporation,

and Appellants used a U.S.-based email service located in the United States and subject to U.S. law and legal process. Indeed, Chevron seeks access to records that are located in the United States. Appellants have standing to challenge the constitutionality of an American Rule 45 subpoena, issued to an American corporation, to be enforced in the United States, under the authority of an American court.

The district court also erred in holding, that Appellants, even the one the district court ultimately found was entitled to First Amendment protections, lacked standing to assert the rights of the other non-parties. That holding was contrary to settled First Amendment standing law, which allows third-party standing where, as here, the plaintiff and the third party share a common interest in enforcing the right, the litigant has an incentive to advocate effectively and practical obstacles prevent a party from asserting rights on behalf of itself.

The district court also erred, after granting one Appellant standing, by failing to apply the proper tests under the First Amendment to protect anonymity and the right of association. The speech at issue here – the identities and private associations of individuals sought as a result of their political speech about environmental pollution – is core political speech. To overcome Appellants' First Amendment rights to anonymous speech, the burden was on Chevron to show the subpoena (1) was issued in good faith and not for an improper purpose, (2) the

information sought relates to a core claim or defense, (3) is directly and materially relevant to that claim or defense, and (4) is unavailable from another source. The district court erred in holding this test did not apply “because the First Amendment does not shield fraud.” Chevron has alleged no cause of action for fraud or any other cause of action against Appellants, nor have they shown, as they are required to do, that Appellants themselves have committed any fraud; First Amendment rights are not lost simply by associating with others alleged to have acted unlawfully.

Appellants made a prima facie showing that disclosure would chill their constitutionally protected associational rights. The burden was thus shifted to Chevron to demonstrate the information sought serves a compelling interest and is the least restrictive means of obtaining the desired information. While Chevron cannot meet this test, the district court erred by failing to even apply it as to any Appellant.

Finally, the district court erred in failing to quash the subpoena as overbroad after it found Chevron had not justified its breadth. Chevron’s subpoena manifestly seeks irrelevant information, in that it would allow Chevron to learn Appellants’ associations and movements not just with respect to the speech about Chevron, but also with respect to every aspect of Appellants’ personal lives.

All are reversible errors.

STANDARD OF REVIEW

The Court reviews dismissals for lack of standing *de novo*. *Thompson v. Cnty. of Franklin*, 15 F.3d 245, 249 (2d Cir. 1994); *Fund for Animals v. Babbitt*, 89 F.3d 128, 132 (2d Cir. 1996) (“we review questions of mootness and standing *de novo* because they are questions of law”). Additionally, the Court reviews issues of constitutional importance *de novo*. *Melzer v. Bd. of Educ. of City Sch. Dist. of City of New York*, 336 F.3d 185, 198 (2d Cir. 2003) (“because this case involves constitutional issues, our review is *de novo*”) (citing *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648–49 (2000)). Finally, the Court has the “authority to decide issues that were argued before but not reached by the district court.” *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 90 (2d Cir. 2004); *see also Booking v. Gen. Star Mgmt. Co.*, 254 F.3d 414, 418-19 (2d Cir. 2001).

ARGUMENT

I. All Appellants Have First Amendment Standing to Challenge Chevron’s Subpoena and May Challenge it as a Whole.

The district court’s standing analysis is wrong in three ways. First, the court, *sua sponte*, imposed a requirement that the litigants assert their national citizenship in seeking to quash the subpoena, a requirement found nowhere in the law. The court then misapplied this requirement to one Appellant, who is in fact an American citizen, only reversing this summary dismissal upon reconsideration. Second, the court found that the three noncitizen Appellants had no First

Amendment standing despite their substantial connections to this country, evident by their involvement in this American dispute with an American company and their use of a U.S.-based email service subject to U.S. law and legal process. Third, the district court erred in preventing the four Appellants from challenging the subpoena as a whole even though they meet the standards for third-party standing under the First Amendment.

A. The District Court Incorrectly Held that Litigants Must Affirmatively Aver Their Citizenship.

The district court erred by requiring the Appellants to aver their U.S. citizenship in order to have standing to raise their First Amendment claims. But there is no such pleading requirement, and no substantive rule that limits First Amendment protections to U.S. Citizens.⁶

B. The First Amendment Protects Appellants, Including Both U.S. and Non-U.S. Citizens.

The three noncitizen Appellants are entitled to the same First Amendment protections as the Appellant who is a U.S. citizen. The district court erred in holding that only U.S. citizens are entitled to First Amendment protection.

Even as to the noncitizens, “[t]he Supreme Court has held in a series of cases that the border of the United States is not a clear line that separates aliens who may

⁶ Chevron did not raise this issue and even conceded that the Appellants had standing to challenge the subpoena to Microsoft with respect to their own accounts.

bring constitutional challenges from those who may not.” *Ibrahim v. Dep’t of Homeland Sec.*, 669 F.3d 983, 995 (9th Cir. 2012). In *United States v. Verdugo-Urquidez*, 494 U.S. 259, 274-75 (1990), the Supreme Court noted that “aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.” *Id.* at 271. More recently, in *Boumediene v. Bush*, 553 U.S. 723, 764 (2008), the Court held that the right of an alien outside the United States to assert constitutional claims is based on “objective factors and practical concerns” rather than “formalism.” In determining the constitutional rights of aliens outside the United States, courts apply a “functional approach” rather than a bright-line rule. *Id.*

In *Boumediene*, the Court held that aliens held as enemy combatants outside the *de jure* sovereign territory of the United States may petition for habeas corpus to challenge the constitutionality of their detention. 553 U.S. at 732. In *Verdugo-Urquidez*, the Court held that the Defendant could not claim the protection of the Fourth Amendment for a search of his property in Mexico because he was “an alien who has had no previous significant voluntary connection with the United States.” 494 U.S. at 260.

The Ninth Circuit recently applied this functional test in *Ibrahim*, holding that a sufficient voluntary connection existed to allow First and Fifth Amendment claims by an alien living abroad when she had conducted “her Ph.D. studies at a

distinguished American university, and wishe[d] to maintain that connection.” 669 F.3d at 996. The student alleged that she had mistakenly been placed on a government watch list, and the court rejected the government’s argument that the fact that she had left the country voluntarily meant that she no longer had standing to raise her First and Fifth Amendment claims. *Id.* at 996-97.

Here, all of the Appellants are being brought into this litigation based upon their speech and associational activities aimed at Chevron, an American corporation. All of them used an email provider located in the United States. Appellants were bound by Microsoft’s terms of use, which provide that that, for customers that live in the United States or North and South America, they are contracting with Microsoft Corporation, One Microsoft Way, Redmond, WA 98052. For customers in North and South America, outside the United States, the terms specifically provide that “Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of choice of law principles.”⁷ And Chevron is seeking information located in the United States; thus, this case is akin to the question that would have been presented in *Verdugo-Urquidez* if the defendant’s property had been located in the United States. As in *Ibrahim*, the Appellants here have significant voluntary connections with the

⁷ Microsoft Services Agreement (Oct. 19, 2012), <http://windows.microsoft.com/en-us/windows-live/microsoft-services-agreement>.

United States that are specific to this action. These are sufficient for them to raise their First Amendment challenge.

Hedges v. Obama, 724 F.3d 170 (2d Cir. 2013), the case relied on by the district court, does not suggest a different result. In *Hedges*, two Americans and two non-resident aliens challenged on First and Fifth Amendment grounds Section 1021 of the National Defense Authorization Act for Fiscal Year 2012. That law “appear[ed] to permit the President to detain anyone who was part of, or has substantially supported, al-Qaeda, the Taliban, or associated forces.” *Id.* at 173. In that case, this Court held that neither the citizens nor the aliens could challenge the law – the citizens because they were not in fact subject to detention under Section 1021, *id.* at 193, and the noncitizens because they had not shown their fear that the government might hold them in indefinite detention under Section 1021 was even remotely likely, *id.* at 202. Neither analysis rested on the citizenship status of the plaintiffs.

The District Court also mistakenly relied on *DKT Memorial Fund Ltd. v. Agency for Int’l Dev.*, 887 F.2d 275 (D.C. Cir. 1989); nothing in the case suggests that a noncitizen lacks standing to assert First Amendment claims with respect to information located *in the United States*. JA 253. In that case, the D.C. Circuit affirmed the dismissal of a lawsuit challenging the State Department’s anti-abortion policy by a number of U.S. and foreign family planning groups. That

court upheld the district court's determination that "the interests in free speech and freedom of association of foreign nationals acting outside the borders, jurisdiction, and control of the United States do not fall within the interests protected by the First Amendment." *Id.* at 283. Yet in doing so, the court was careful to note that its holding did *not* mean "that an alien beyond the bounds of the United States never has standing to assert a constitutional claim." *Id.* at 285.

Unlike in *DKT* and *Verdugo-Urquidez*, the noncitizen Appellants before this Court do not argue for the extraterritorial application of the Bill of Rights. Appellants challenge the constitutionality of an American Rule 45 subpoena issued to an American corporation, to be enforced here in the United States, under the authority of an American court. Furthermore, unlike the defendant in *Verdugo-Urquidez*, the three noncitizen Appellants here are not foreigners with no "previous significant voluntary connection with the United States." *See Verdugo-Urquidez*, 494 U.S. at 271. Rather, they are environmental activists engaged in a campaign specifically targeting an American corporation who chose to use an email service located in the United States.

Indeed, Appellants and the other non-parties are being targeted by Chevron specifically *because of* their previous significant voluntary connection with the United States. And Chevron can seek their information only *because of* their connection with the American company Microsoft. Chevron's own example of

how the information could be relevant confirms as much; it sought location information precisely because it might help Chevron determine what actions were taken *in the United States*, which Chevron asserts may be relevant to determine whether Chevron is seeking an extraterritorial application of RICO.⁸ JA 28.

C. Appellants Have Standing to Challenge the Validity of the Subpoena as Applied to Them and as a Whole.

The District Court also erred in failing to allow the Appellants, even the one who it found to be protected by the First Amendment, to assert the rights of the other non-parties for whom the subpoena was also improper. Settled First Amendment standing law permits the Appellants to quash the subpoena on behalf of all of those subject to it.

As a general matter, two factors determine whether a litigant may, as prudential matter, assert the rights of another: the relationship between the litigant and the third person and the ability of the third party to assert his own right. *Campbell v. Louisiana*, 523 U.S. 392, 397-98 (1998), *citing Powers v. Ohio*, 499 U.S. 400, 411, 413 (1991). The first requirement is met where the plaintiff and the

⁸ To the extent communications occurred outside the United States, that would simply serve to undermine Chevron's argument that the location information is relevant.

third party share a common interest in enforcing the right and the litigant has an incentive to advocate effectively. *Campbell*, 523 U.S. at 398.⁹

Specific to this context, the Supreme Court has long recognized that a third party has standing to assert another's First Amendment rights "[w]here practical obstacles prevent a party from asserting rights on behalf of itself." *Sec'y of State Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984); *see also Lerman v. Bd. of Elections*, 232 F.3d 135, 143-44 (2d Cir. 2000). Such standing is appropriate when the third party has suffered injury in fact, and when the third party "can reasonably be expected properly to frame the issues and present them with the necessary adversarial zeal." *Joseph H. Munson*, 467 U.S. at 956 (citing *Craig v. Boren*, 429 U.S. 190, 193-94 (1976)).

Courts have applied this doctrine to recognize the standing of third parties to move to quash subpoenas seeking the identities of anonymous online speakers who have not directly asserted their own First Amendment rights. *See, e.g., Enterline v. Pocono Med. Ctr.*, 751 F. Supp. 2d 782, 786 (M.D. Pa. 2008) (finding media company had standing to assert First Amendment rights of anonymous commenters on its website); *In re Ind. Newspapers Inc.*, 963 N.E.2d 534, 549 (Ind.

⁹ There need not be any personal relationship between the litigant and the third party. Thus, in *Campbell*, a white criminal defendant had standing to assert the equal protection right of a person excluded from a grand jury on racial grounds.

Ct. App. 2012) (same); *McVicker v. King*, 266 F.R.D. 92, 95-96 (W.D. Pa. 2010) (same).

1. Practical Obstacles Exist for Holders of Email Accounts to Challenge the Subpoena.

Practical obstacles plainly existed for the individuals who did not appear. First, they were not served with, or otherwise effectively notified of, the subpoenas. Microsoft only sent email to their addresses, in English, informing them about the subpoena. While Microsoft's voluntary efforts are commendable, they are a far cry from effective legal service of process. Even if the non-movants received the email, some of the email account holders may live or work abroad, which may make it difficult for them to find counsel to challenge these subpoenas in federal court in New York. Some may not read English, or may not read it sufficiently to understand the formal language of a subpoena, and therefore may not have understood the notice. Indeed, as discussed above, John Doe 2 and several of the non-parties in the California cases only realized that their email addresses were involved after the case began and had to be added later, demonstrating that the Microsoft email process was not a substitute for actual notice.

The district court's rejection of standing was based on a mistaken factual assumption. It asserted that "owners of at least some of these accounts have opposed these subpoenas in the Southern District of New York and the Northern District of California." JA 244. Not so. As far as counsel is aware, none of the

email address holders who did participate in the California action involving Google and Yahoo! have not participated here. And there was no evidence in the record to suggest that the district court's assumption was correct.

2. Appellants Have Suffered Injuries in Fact.

In a First Amendment challenge, a party may establish injury in fact by “demonstrat[ing] a realistic danger of sustaining a direct injury” as a result of the challenged action. *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979).

All of the Appellants have suffered an injury in fact; indeed, their injuries are particularly acute here. As the declarations of John Doe and John Doe 2 make clear, they feel harassed by Chevron’s attempt to obtain information about their past involvement in advocacy efforts against the company’s oil extraction activities. JA 12; JA 217. John Doe 2 has already faced physical threats as a result of participating in environmental advocacy efforts against Chevron. JA 217. Moreover, John Doe 2 knows others who have stopped participating in or declined to participate in activism against Chevron because they fear harassment and retribution. *Id.* John Doe fears further harassment if Chevron actually gains access to the information it seeks and believes this result will chill his political expression in the future. JA 12.

3. Appellants Have Handled the Case Appropriately on Behalf of All of the Email Customers.

Appellants framed the issues properly and presented them with adversarial zeal. The Appellants and the non-party owners of the other email accounts listed in the subpoena are similarly situated. Chevron seeks the same information about each of these individuals, and each account owner has First Amendment interests in the entirety of the information sought by Chevron. They have all been targeted because of their association with the Chevron-Ecuador litigation. The Appellants have presented the legal issues in a manner that applies to all the affected individuals and have retained counsel to litigate these questions vigorously.

For these reasons, Appellants have First Amendment standing to challenge the subpoena as a whole, not just as it applies to them individually.

II. Chevron's Subpoena Impermissibly Burdens Appellants' First Amendment Rights to Anonymous Speech and Association.

Chevron's subpoena here fails both the First Amendment tests for anonymous speech and the First Amendment tests protecting the right of association.

A. The Subpoena Burdens the Appellants' First Amendment Rights to Anonymous Speech.

The subpoena seeks to identify speakers from their email addresses and tie their speech to those identities, based upon their alleged participation in the advocacy and litigation campaign against Chevron. Under the broad protections of

the First Amendment, speakers have not only a right to organize and engage in political advocacy, but also the right to do so anonymously. It is not that identities can never be discovered, it is that much higher tests must be met than those applicable to ordinary discovery, especially when those individuals are not parties. Accordingly, the First Amendment requires that those who seek to discover the identities of their political critics (let alone track their movements over the course of nearly a decade), demonstrate a compelling need for such information before obtaining that discovery.

The district court rejected Appellants' anonymous speech claims solely because of the erroneous belief that Appellants had waived their anonymity "in light of the email addresses they chose and the publicity they have received." JA 222. But it is not true that each of the Appellants used his own name or initials in his email address. *See* JA 226 (unredacted version on file with the Court).

Contrary to both Chevron and the district court's assertions, email addresses that appear to reflect an individual's name are entitled to just as much protection as email addresses that do not. The appearance of absolute secrecy of a speaker's identity has never been a requirement for First Amendment protection. In the *McIntyre* case, for instance, which protected the right of Margaret McIntyre to pass out unsigned leaflets at a community meeting at a middle school in Westerville, Ohio, the fact that many of the attendees of the meeting likely knew who Mrs.

McIntyre was by sight made no difference to the Court's analysis. The same is true of the Jehovah's Witness members in Wellsville, Ohio, where the Supreme Court held: "The fact that circulators revealed their physical identities did not foreclose our consideration of the circulators' interest in maintaining their anonymity." *Watchtower Bible & Tract Soc. of NY, Inc. v. Village of Stratton*, 536 U.S. 150, 167 (2002).

Even Chevron must concede that the email addresses do not sufficiently indicate the owner's identity. In fact, Chevron served this subpoena on Microsoft precisely because the email addresses alone did not sufficiently confirm the identity of each account holder. If the identity information was not actually needed by Chevron, this subpoena should be held to be improper as redundant and unnecessary, and the concern that it was issued solely to harass and intimidate becomes more pronounced. Regardless, Chevron's goal here is to tie identities to private speech, and that implicates the First Amendment even if it were true that the identities themselves were not protected.

1. The Right to Engage in Anonymous Speech is Protected By the First Amendment.

Nevertheless, even if the email addresses suggested certain identities of the accountholders, Chevron's subpoena – which seeks confirmation of the identities – still has to meet the First Amendment tests.

The Supreme Court has consistently defended the right to anonymous speech in a variety of contexts, noting that “[a]nonymity is a shield from the tyranny of the majority . . . [that] exemplifies the purpose [of the First Amendment] to protect unpopular individuals from retaliation . . . at the hand of an intolerant society.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995); *see also Talley v. California*, 362 U.S. 60, 64 (1960) (finding a municipal ordinance requiring identification on hand-bills unconstitutional, noting that “[a]nonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind”). Anonymity receives the same constitutional protection whether the message is conveyed by political leaflet, Internet message board, or email. *See Reno v. ACLU*, 521 U.S. 844, 870 (1997); *see also, e.g., Doe v. 2theMart.com*, 140 F. Supp. 2d 1088, 1092 (W.D. Wash. 2001) (“The right to speak anonymously extends to speech via the Internet. Internet anonymity facilitates the rich, diverse, and far ranging exchange of ideas.”). These fundamental rights protect anonymous speakers from forced identification, be they from overbroad statutes or unwarranted discovery requests.

2. One Does Not Lose His First Amendment Rights Because He Has Associated with Others Who May Have Acted Unlawfully.

Appellants are not denied their First Amendment rights simply because they have associated with others who might have acted unlawfully. *NAACP v.*

Claiborne Hardware Co., 458 U.S. 886, 908, 915, 919–20, 934 (1982). In *Claiborne Hardware*, the Court addressed a boycott designed to promote racial equality that was enforced in part through violence, but that also included speeches, peaceful protests and the voluntary choice of many local residents not to use certain stores. *Id.* at 888–89, 903–4. The Court held that the non-violent elements of the campaign were protected by the First Amendment; individuals’ First Amendment rights are not limited—and they could not be held liable—simply because their partners in expressive activity violated the law in furtherance of their joint campaign. *Id.* at 908, 915, 919–20, 934. First Amendment rights will be denied only to those who themselves had “a specific intent to further an unlawful aim.” *Id.* at 925; *accord id.* at 920, 933. Without evidence of specific criminal intent—“judged according to the strictest law”—the exercise of First Amendment rights of association are not criminal and remain protected. *Id.* at 919 (internal quotation omitted). Speech itself cannot be evidence of illegality. *See id.* at 932–34. And Chevron’s burden to show illegal intent was “heavy.” *Id.* at 934. The district court was under “a special obligation” to examine Chevron’s allegations “critically” and with “extreme care.” *Id.* at 915, 926.

The district court also erred in holding that the First Amendment tests were “inapplicable because the First Amendment does not shield fraud.” JA 254. But of course, Chevron has not alleged a cause of action for fraud, or any other cause of

action for that matter, against the Appellants or any other non-party targeted by this subpoena.

The district court's belief that "[W]hether and how the defendants in that action and co-conspirators engaged in a media campaign . . . is quite relevant to Chevron's RICO claims" (JA 254) *is in direct conflict with Claiborne Hardware*. That is, the district court merely concluded, in cursory fashion and without analysis, that there is evidence that the Ecuadorian litigation was tainted by fraud and that the Cabrera Report was not independent, and then found it sufficient that John Doe discussed those matters. Yet these observations, even if true, are not sufficient to find that the targets of the subpoena committed fraud. Thus, they cannot render the First Amendment inapplicable.

Moreover, neither Chevron nor the district court explained how discovery of the names and locations of *non-parties* are required, or even relevant, to prove the fraudulent conduct of others. For instance, Chevron suggested that that the IP logs are required to prove that certain RICO predicate acts occurred in the United States. Yet Chevron needs to prove that *the defendants* committed acts within the United States, not non-parties like Appellants.

Similarly, while the district court did not rely on it, Chevron has also claimed that some of the non-party email addresses may be owned, used, or controlled by the parties to the litigation. Yet, as described further below, the

proper vehicle for confirming that belief would have been a discovery request or deposition question directed to those parties, which apparently Chevron did not make.

The speech at issue here—the identities and associations of individuals that are being sought as a result of their political speech about pollution and other damage caused by oil exploration activities—is core political speech for which the First Amendment protection should be “at its zenith.” *See e.g. Meyer v. Grant*, 486 U.S. 414, 425 (1988).

3. Anonymous Speakers Enjoy a Qualified Privilege Under the First Amendment.

A court order, even if granted to a private party, is state action and hence subject to constitutional limitations. *See, e.g., New York Times v. Sullivan*, 376 U.S. 254, 265 (1964); *Shelley v. Kraemer*, 334 U.S. 1, 14 (1948). Because the First Amendment protects anonymous speech and association, efforts to use the power of the courts to pierce anonymity are subject to a qualified privilege. Courts must “be vigilant . . . [and] guard against undue hindrances to . . . the exchange of ideas.” *Buckley v. Am Constitutional Law Found., Inc.*, 525 U.S. 182, 192 (1999). This vigilant review “must be undertaken and analyzed on a case-by-case basis,” where the court’s “guiding principle is a result based on a meaningful analysis and a proper balancing of the equities and rights at issue.” *Dendrite Int’l, Inc. v. Doe No. 3*, 775 A.2d 756, 761 (N.J. Super. Ct. App. Div. 2001). But here, the district

court did not undertake any of the required, case-by-case balancing of the rights and equities.

Just as in other cases in which litigants seek information that may be privileged, courts must consider the First Amendment privilege before authorizing discovery. *See, e.g., Sony Music Entm't Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 565 (S.D.N.Y. 2004) (“Against the backdrop of First Amendment protection for anonymous speech, courts have held that civil subpoenas seeking information regarding anonymous individuals raise First Amendment concerns.”); *Grandbouche v. Clancy*, 825 F.2d 1463, 1466 (10th Cir. 1987) (“[W]hen the subject of a discovery order claims a First Amendment privilege not to disclose certain information, the trial court must conduct a balancing test before ordering disclosure.”).

To be sure, the constitutional privilege to remain anonymous is not absolute. Plaintiffs may properly seek information necessary to pursue meritorious litigation. *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999) (First Amendment does not protect anonymous Internet users from liability for tortious acts such as defamation); *Doe v. Cahill*, 884 A.2d 451, 456 (Del. 2005) (“Certain classes of speech, including defamatory and libelous speech, are entitled to no constitutional protection.”).

Litigants may not use the discovery power to uncover the identities of people who have simply made statements the litigants dislike or who associate with those whom they dislike. Accordingly, courts evaluating attempts to unmask anonymous speakers in cases similar to the one at hand have adopted standards that balance one person's right to speak anonymously with a litigant's legitimate need to pursue a claim.

The seminal case setting forth First Amendment restrictions upon a litigant's ability to compel an online service provider to reveal an anonymous non-party's identity is *Doe v. 2theMart.com*, *supra*, which adopted a four-part test for protecting anonymous speakers that has been followed by courts around the country.¹⁰ In order for the litigant to obtain the anonymous non-party's identity, he must show:

- (1) the subpoena seeking the information was issued in good faith and not for any improper purpose,
- (2) the information sought relates to a core claim or defense,
- (3) the identifying information is directly and materially relevant to that claim or defense, and

¹⁰ See, e.g., *USA Technologies, Inc. v. Doe*, 713 F. Supp. 2d 901, 906 (N.D. Cal. 2010); *Enterline*, 751 F. Supp. 2d at 787; *Mobilisa, Inc. v. Doe*, 170 P.3d 712, 719 (Ariz. Ct. App. 2007).

- (4) information sufficient to establish or to disprove that claim or defense is unavailable from any other source.

Id. at 1095 (line breaks added for clarity). That court further stated “non-party disclosure is only appropriate in the exceptional case where the compelling need for the discovery sought outweighs the First Amendment rights of the anonymous speaker.” *Id.* The district court failed entirely to apply, not just the *2theMart.com* test, but any test to balance the First Amendment rights of the Appellants with Chevron’s purported need for the discovery.

4. As Chevron’s Subpoena Demand for Identity Information Cannot Survive the Scrutiny Required By the First Amendment, it Must Be Quashed Under Federal Rule of Civil Procedure 45.

i. Chevron Did Not Issue These Subpoenas in Good Faith or for Any Proper Purpose.

Chevron has failed to explain the purpose of its subpoena for information regarding individuals against whom it has not alleged any causes of action, much less tie the information to its burdens of proof in the RICO action against others. This concern that the information is not sought for litigation purposes is exacerbated by the fact that Chevron has maintained its defense of this subpoena, even beyond the commencement of trial.¹¹ Chevron simply wants to know the

¹¹ All of which is highly protected speech. *See, e.g., NAACP v. Button*, 371 U.S. 415, 429-31 (1963) (litigation is a form of political speech); *Thomas v. Collins*,

identity and track the movements of non-parties who have engaged in speech that Chevron vehemently dislikes and who have associated with or supported its opponents in its underlying lawsuit in New York. JA 31. As discussed in greater detail below, the risk that a political opponent or critic may have his or her identity, location, emailing habits, and other personal information over *nine years* revealed merely by dint of association with other activists critical of Chevron, even activists who might themselves be legitimately subject to litigation, will chill future political speech. Indeed, many of the non-parties named by Chevron in its subpoenas feel harassed and intimidated by Chevron's pursuit of their personal information. *See, e.g.*, JA 12, 217. The specter of an improper purpose is strong.

ii. Chevron Has Made No Showing that the Information Sought Relates to a Core Claim or that it Is Directly and Materially Relevant to that Claim.

Before Chevron may obtain the discovery it seeks, it must show that the information requested relates to a core claim or defense, *and* that the identity information is directly and materially relevant to that claim or defense. *See 2theMart.com*, 140 F. Supp. 2d at 1096. Chevron cannot do so. The subpoena at issue seeks the disclosure of the identity of as many as 30 individuals, along with IP logs reflecting locations and all other “usage logs” associated with the accounts, over the course of nine years. Even the district court recognized with respect to the

323 U.S. 516, 537 (1945) (First Amendment protects advocacy to “persuade to action”).

one email address it considered that it is exceedingly unlikely that all this information, or even a sizeable percentage of it, is in any way relevant to Chevron's claims, much less directly and materially relevant to those claims. JA 254. As the district court found, "Chevron has offered no argument why it has any compelling need for" the full nine years of detailed email usage information which would provide a catalog of the account holder's daily movements since 2003 and that to do so could "intrude upon certain protected activities." *Id.*

The district court also found that Chevron cannot show that, aside from a narrow time frame, its request for information about even one Appellant could have the slightest relationship to any claim or defense it might have in the underlying litigation. *Id.* But the district court ignored the implication of its own finding; if the scope for one non-party must be narrowed, there is no possibility that nine years of IP logs for each of the other 29 non-parties targeted by Chevron are directly and materially relevant to its case. The district court's failure to conduct any inquiry regarding the remaining 29 non-parties' accounts targeted by Chevron was error.

Indeed, the district court's failure to narrow the temporal scope of the subpoenas requires reversal because relevance is a valid objection to discovery, wholly apart from the First Amendment. Fed. R. Civ. P. 26(c); *Nova Biomedical Corp. v. i-STAT Corp.*, 182 F.R.D. 419, 423 (S.D.N.Y. 1998) (a subpoena for

information in a timeframe not relevant to the litigation is overbroad on its face and should be quashed). The district court's conclusion that the Appellants lacked standing to raise First Amendment claims did not affect their ability to raise relevance objections, and it was error for the district court not to consider those objections.

iii. Chevron Has Made No Showing that the Information Sought Is Unavailable from Any Other Source.

Litigants should undertake discovery from non-party witnesses only if party discovery has been exhausted: "These witnesses are not parties to the action, and they should not be burdened with the annoyance and expense of producing the documents sought unless the plaintiff is unable to discover them from the defendant." *Bada Co. v. Montgomery Ward & Co.*, 32 F.R.D. 208, 209-10 (S.D. Cal. 1963). Accordingly, in order for Chevron's subpoena to survive, it must have demonstrated that "the information it needs to establish its defense is unavailable from any other source." *See 2theMart.com*, 140 F. Supp. 2d at 1097. It failed to do so.

Chevron already has in its possession a vast amount of emails from the parties and direct witnesses, including the entire computer hard drives of many of them. *See, e.g.*, JA 31, 42-81. If the question Chevron sought to answer with this subpoena were truly whether the owners of the email addresses acted in concert with the parties, or were in fact the parties, then Chevron should have asked the

parties directly in ordinary discovery. That evidence would be far superior—and far less intrusive—than IP logs that track all of the movements of non-parties over a nine-year period.

In sum, Chevron cannot satisfy the *2theMart.com* test, and its attempt to seek the identities of the non-parties must be quashed because it violates the Appellants’ First Amendment right to anonymity. The district court’s failure to apply the *2theMart.com* test, or *any* First Amendment test to Chevron’s subpoena, was reversible error.

B. The Subpoena Burdens the Appellants’ First Amendment Right to Association.

Independently of the right of anonymous speech, the First Amendment also protects the freedom to associate and express political views as a group. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-62 (1958). “[L]ike free speech,” the freedom of association “lies at the foundation of a free society.” *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (quoting *Shelton v. Tucker*, 364 U.S. 479, 486 (1960) (internal quotation marks omitted)). This constitutional protection is critical because: “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association[.]” *NAACP v. Alabama*, 357 U.S. at 460; *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960) (the Constitution protects freedom of association to encourage the “advancing ideas and airing grievances”).

The Appellants' advocacy efforts on behalf of the victims of pollution are precisely the sort of expression the First Amendment protects.

1. The Appellants Enjoy a First Amendment Right to Political Association and to Advocate Controversial Views as a Group.

The Supreme Court has repeatedly held that compelled disclosure of an advocacy group's membership lists harms freedom of association because "it may induce members to withdraw from the association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." *NAACP v. Alabama*, 357 U.S. at 463. *See also Bates*, 361 U.S. at 523; *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539 (1963). "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP v. Alabama*, 357 U.S. at 462.

This rule has an especially powerful application here where the subpoena seeks not only the Appellants' identities but a wealth of other information about their movements and interactions including their personal habits and day-to-day patterns, which are utterly irrelevant to the underlying litigation. *See United States v. Jones*, 132 S. Ct. 945, 955 (2012) (Sotomayor, J., concurring) (continual location monitoring over a prolonged period "reflects a wealth of detail about [a

person's] familial, political, professional, religious, and sexual associations.”). As the D.C. Circuit has noted, such observation of a person's movements

reveals types of information not revealed by short-term surveillance, such as what a person does repeatedly, what he does not do, and what he does ensemble. . . . A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups—and not just one such fact about a person, but all such facts.

United States v. Maynard, 615 F.3d 544, 562 (D.C. Cir. 2010), *aff'd sub nom. Jones*, 132 S. Ct. 945. The fact that Chevron's subpoena covers both political, and at the same time intensely personal information, makes the subpoena radically overbroad, especially since the district court conducted no balancing of interests.

In *Shelton v. Tucker*, the Supreme Court considered a similarly indiscriminate collection of associational information, which required teachers to provide all of their associational ties for a five-year period, even though many of those ties, like the location information collected here, had nearly no reasonable relationship to the government's legitimate interest in teacher fitness. The Supreme Court noted that this requirement would gather in, “every conceivable kind of associational tie—social, professional, political, avocational, or religious,” and noted that many such relationships could have no possible bearing upon the teacher's occupational competence or fitness. *Shelton*, 364 U.S. at 488. The same is true here.

Chevron's subpoenas are squarely aimed at not only identifying, but also mapping the movements of individuals it believes are involved in political expression: specifically, environmental advocacy against the oil company and related activism.¹² Among other things, the IP address information Chevron seeks could tell the company when the Non-Party Appellants were in the United States or Ecuador; when they were in a particular town, building, home or even a particular organization's office; and when each non-party was in the same place at the same time as other individuals whose email usage information is revealed, presumably meeting with each other. *See* JA 239.

And that mapping is not limited to the Appellants' advocacy activities. Allowing Chevron access to information about the Non-Party Appellants' identities and locations over time would reveal not only a wealth of details about their habits and patterns that are intimately tied to their political associational activities.

Chevron has also misconstrued the associational interest at issue here. Chevron repeatedly described the relevant association as the "involvement" between the non-party email account owners and the plaintiffs in the Lago Agrio litigation. JA 31, 39. The district court seems to have adopted Chevron's position without analysis. JA 254. In fact, the Appellants have asserted their right to

¹² All of which is highly protected speech. *See* note 10, *supra*.

associate with others engaged in environmental litigation against the oil company and more broadly to environmental activism, all of which is highly protected political speech reaching beyond the Lago Agrio litigation or any alleged RICO enterprise. *See, e.g., NAACP v. Button*, 371 U.S. at 429-31; *Thomas*, 323 U.S. at 537. Chevron may not agree with the Appellants' viewpoints, but "[t]he freedom to associate applies to the beliefs we share, and to those we consider reprehensible." *Gilmore v. City of Montgomery*, 417 U.S. 556, 575 (1974).

2. The Appellants Have a Qualified First Amendment Privilege Subject to Heightened Scrutiny That Can Only be Overcome by a Compelling Interest.

Individuals may assert a qualified privilege to protect information when a civil discovery request threatens the freedom of association. *NAACP v. Alabama*, 357 U.S. at 460-63; *Perry v. Schwarzenegger*, 591 F.3d 1126, 1140 (9th Cir. 2011); *In re Motor Fuel Temperature Sales Practices Litig.*, 641 F.3d 470, 481 (10th Cir. 2011). The Supreme Court has made clear that infringements on freedom of association may survive constitutional scrutiny only when they "serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984); *see also NAACP v. Button*, 371 U.S. at 341; *Knox v. SEIU, Local 1000*, 132 S. Ct. 2277, 2291 (2012) (burden on freedom of association "must serve a compelling interest and must not be

significantly broader than necessary to serve that interest.”). Many courts frame this privilege as a heightened discovery standard: Whereas all subpoenas are confined to relevant information and cannot be overbroad, the First Amendment requires a more stringent relevance standard and less tolerance for overbroad subpoenas. *See FEC v. LaRouche Campaign, Inc.*, 817 F.2d 233, 234-35 (2d Cir. 1987) (requiring agency to demonstrate need beyond mere relevance to an investigation to justify compelling disclosure of the names of campaign contributors); *Perry*, 591 F.3d at 1140.

A party seeking to assert the associational privilege must first make a *prima facie* showing that there is “a reasonable probability that compelling disclosure will lead to some form or specter of harassment, threat, or reprisal of the organization and/or its members.” *Sherwin-Williams Co. v. Spitzer*, No. 1:04CV185 (DNH/RFT), 2005 WL 2128939, at *4 (N.D.N.Y. Aug. 25, 2005) (citing *Buckley v. Valeo*, 424 U.S. at 74; *Local 1814, Int’l Longshoremen’s Assoc. AFL-CIO v. Waterfront Comm’n. of New York Harbor*, 667 F.2d 267, 271-73 (2d Cir. 1981); *In re Grand Jury Proceedings*, 776 F.2d 1099, 1103 (2d Cir. 1985)). The Appellants’ burden to make this showing is “light” due to the “crucial place speech and associational rights occupy under our constitution[.]” *N.Y. State Nat’l Org. for Women v. Terry*, 886 F.2d 1339, 1355 (2d Cir. 1989).

Once the Appellants make this prima facie showing, the burden shifts to Chevron to demonstrate a “compelling [state] need” for the information that survives “exacting scrutiny.” *In re Grand Jury Proceedings*, 776 F.2d at 1102-03 (citing *Bates*, 361 U.S. at 524 and *Buckley v. Valeo*, 424 U.S. at 64). The district court was not free to compel disclosure unless the information sought is “substantially related” to that compelling interest, and would not have an “unnecessary impact on protected rights of speech, press or association.” *In re Grand Jury Proceedings*, 776 F.2d at 1103; *see also Int’l Longshoremen’s Assoc. v. Waterfront Comm’n*, 667 F.2d 267, 271 (2d Cir. 1981); *Buckley v. Valeo*, 424 U.S. at 64.

i. The Appellants’ Right to Association Will be Harmed if Their Identities and Email Usage Information is Disclosed.

Compliance with the subpoena is likely to create some form or specter of “threats, harassment, or reprisals” for the Appellants, chilling their freedom to associate. *Buckley v. Valeo*, 424 U.S. at 74. As discussed above, both Does’ declarations make clear that they already feel harassed by Chevron’s attempt to obtain the information about their past involvement in advocacy against the company and fear further harassment if Chevron actually gains access to the information it seeks. JA 12, JA 217. And this is hardly surprising; few would be willing to engage in political activism if they knew their opponents could track

their movements over the preceding decade and thus potentially glean the most personal of details about their lives.

Appellants thus made a *prima facie* showing that Microsoft's compliance with Chevron's subpoena will chill the Appellants' constitutionally protected associational rights. The district court's failure to address Appellants' showing and apply the law to it merits reversal.

ii. Disclosure of the Appellants' Information Does Not Serve a Compelling Interest and Is Not the Least Restrictive Means of Furthering a Compelling Interest.

Even the district court recognized, with respect to the one Appellant it considered, that Chevron did not satisfy its burden of showing that all of the information it seeks serves a compelling interest and is the least restrictive means of obtaining the desired information. JA 254. *See Int'l Longshoremen's Assoc.*, 667 F.2d at 271; *In re Grand Jury Proceedings*, 776 F.2d at 1103. But even there, its analysis was inadequate. To determine whether Chevron should obtain the discovery it seeks, the district court was required to balance the "burdens imposed on individuals and associations against the . . . interest in disclosure" to determine whether the "interest in disclosure . . . outweighs the harm" to the Appellants' associational rights. *Perry*, 591 F.3d at 1140 (internal quotations and citations omitted). Critically, Chevron had the burden to demonstrate that the information sought is "highly relevant to the claims or defenses in the litigation," that the

subpoena was “carefully tailored to avoid unnecessary interference with protected activities,” and that the information sought is “otherwise unavailable.” *Id.* Despite finding that Chevron showed none of these things, JA 254, the district court nonetheless took no action to narrow Chevron’s subpoena except as to a single Appellant; even then, it allowed three-years worth of location and associational information to be turned over.

The scope of Chevron’s subpoenas far exceeds any interest it may have in receiving information necessary to its case. The company seeks a vast amount of information that is not “highly relevant” to the claims in the underlying litigation, nor has it demonstrated a compelling need.

Finally, as discussed above, the subpoena was not the least restrictive means of obtaining the information Chevron seeks. Chevron could have learned the information it desired by seeking discovery directly from the parties rather than issuing sweeping subpoenas to third-party service providers that implicate the First Amendment rights and personal privacy of scores of people who are not parties to the case.

Chevron’s fishing expedition violates the Appellants’ associational rights, and the subpoena should have been quashed in its entirety for this reason alone. The district court erred by failing to engage in even a token analysis of the Appellants’ First Amendment right to association.

III. Chevron's Subpoena Is Overbroad.

Finally, the district court abused its discretion by failing to quash Chevron's subpoena under Federal Rule of Civil Procedure 26(c) after it found that Chevron offered no argument defending its nine-year scope.¹³

As drafted, Chevron's subpoena is overbroad on its face, and is therefore oppressive and unreasonable. *See, e.g., McMann v. SEC*, 87 F.2d 377, 379 (2d Cir. 1937) (L. Hand, J.) (a discovery request is unreasonable when "it is out of proportion to the end sought"); *United States v. IBM*, 83 F.R.D. 97, 106-07 (S.D.N.Y. 1979) ("To the extent a subpoena sweepingly pursues material with little apparent or likely relevance to the subject matter it runs the greater risk of being found overbroad and unreasonable.").

If the data sought by Chevron here were disclosed, it would not only constitute an invasion of the non-parties' personal privacy, but also include a tremendous amount of information wholly irrelevant to Chevron's claims and defenses and far beyond the scope of reasonable or fair discovery.

The district court recognized that the scope of Chevron's subpoena rendered it overbroad as applied to the single Appellant whose challenge that court

¹³ *See Windsor v. Martindale*, 175 F.R.D. 665, 670 (D. Colo. 1997) (a court should quash a subpoena *sua sponte* as an exercise of its "inherent power to protect anyone from oppressive use of process") (citing *Gregg v. Clerk of U.S. Dist. Court*, 160 F.R.D. 653, 654 (N.D. Fla. 1995)); *Broome v. Simon*, 255 F. Supp. 434, 437 (W.D. La. 1965) (same).

considered. JA 254. However, the district court failed to require Chevron to justify or limit its request as to the other 29 email addresses it targeted. This was error even if the district court was correct that noncitizens lack standing under the First Amendment; there is no argument that noncitizens lack standing to challenge subpoenas that are overbroad under the Federal Rules. The district court's failure to quash or modify a subpoena of such breadth that even it recognized could "intrude upon certain protected activities" is plain error.

As also noted above, by maintaining its defense of this subpoena, even beyond the commencement of trial, Chevron has raised real concerns that its purpose in issuing it was to harass and intimidate the activists, interns, young lawyers, volunteers and journalists who have shown some sympathy for or supported the Ecuadoran plaintiffs who sought judicial recourse against Chevron. It was an abuse of discretion for the district court to permit Chevron to use the court's authority to intrude into these non-parties' day-to-day activities without Chevron first showing that each of the individuals it has targeted was in fact part of the conspiracy it alleges and that the full range of the information sought met the standard of "likely to lead to the discovery of admissible evidence." It did not, and could not, do so.

IV. This Court Should Reverse the District Court and Reject Chevron's Subpoena in the First Instance.

The district court ultimately agreed that the First Amendment applied to one Appellant yet failed to conduct the required analysis of the non-parties' First Amendment rights of anonymous speech and association. And because the district court also erred in determining that the First Amendment did not apply to the noncitizen Does, it did not conduct the required analysis as to *any* Appellant. This Court may reverse and remand for that reason alone. *See, e.g., Church of the Am. Knights of the KKK v. Kerik*, 356 F.3d 197, 208 (2d Cir. 2004).

However, this Court should apply the First Amendment tests in the first instance. *Hartford Courant Co.*, 380 F.3d at 91 (“The existence of the First Amendment right—although not its application to this case [where there were disputed issues of fact]—is a matter of law suitable for determination by an appellate tribunal in the first instance.”). Since much of the standing issue was raised by the district court *sua sponte*, the record on the First Amendment tests appears complete and there are no disputed issues of fact, Appellants urge that it do so.

CONCLUSION

For the reasons stated above, the Appellants respectfully request that this Court reverse the order of the district court, and remand with instructions to apply First Amendment standing principles to the Appellants' motion to quash.

Dated: October 31, 2013

By: /s/ Nathan D. Cardozo

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE
REQUIREMENTS PURSUANT TO FED. R. APP. P. 32(a)(7)(C)**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify as follows:

1. This Appellants' Opening Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 11,471 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 for Mac, the word processing system used to prepare the brief, in 14 point Times New Roman font.

Dated: October 31, 2103

By: /s/ Nathan D. Cardozo
Nathan D. Cardozo

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13-2784-cv

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

CHEVRON CORPORATION,

PLAINTIFF-APPELLEE,

V.

NON-PARTY JOHN DOE SIMEONTEGEL@HOTMAIL.COM, NON-PARTY JOHN DOE
MEY_1802@HOTMAIL.COM, NON-PARTY JOHN DOE PIRANCHA@HOTMAIL.COM, NON-
PARTY JOHN DOE DURUTI@HOTMAIL.COM,

MOVANTS-APPELLANTS,

V.

STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER, DONZIGER &
ASSOCIATES, PLLC, JAVIER PIAGUAJE, HUGO GERARDO, CAMACHO NARANJO,

DEFENDANTS.

On Appeal from the United States District Court
for the Northern District of New York
Honorable Lewis A. Kaplan, U.S. District Judge

JOINT APPENDIX

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Dated: October 31, 2013

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-mc-65 GLS/CFH

Hon. Gary L. Sharpe

STEVEN DONZIGER, *et al.*,

Defendants.

**NOTICE OF MOTION OF NON-PARTY JOHN DOE MOVANTS TO QUASH
SUBPOENAS TO MICROSOFT, INC. SEEKING IDENTITY AND EMAIL USAGE
INFORMATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO QUASH**

NOTICE OF MOTION

TO PLAINTIFF CHEVRON CORP. AND ALL COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that the Non-Party John Doe Movants hereby move the District Court for the Northern District of New York to quash the subpoena served by Plaintiff Chevron Corporation on or around September 18, 2012 to non-party company Microsoft in the District Court for the Northern District of New York. The subpoena seeks identity and email usage information associated with 30 Hotmail addresses. The subpoena was issued in support of a civil action filed in the District Court for the Southern District of New York on February 1, 2011 captioned *Chevron Corp. v. Donziger, et al.*, Case No. 11-cv-0691 (LAK). A date and time at which this motion will be heard are to be determined.

As discussed in the memorandum below, Chevron's subpoena should be quashed because it violates the constitutional rights of anonymity and freedom of association of non-party online users. This motion, made pursuant to Federal Rule of Civil Procedure 45(c) and the New York Civil Practice Law and Rules §§ 2304 and 3103, is based on this notice, the attached memorandum of points and authorities, all accompanying declarations and exhibits, and on such oral argument as may be received by this Court. The Non-Party John Doe Movants respectfully request that this Court grant this motion and quash the subpoena issued by Chevron in its entirety.

DATED: October 22, 2012

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-mc-65 GLS/CFH

Hon. Gary L. Sharpe

STEVEN DONZIGER, *et al.*,

Defendants.

**DECLARATION OF SETH SCHOEN IN SUPPORT OF MOTION OF NON-PARTY
JOHN DOE MOVANTS TO QUASH SUBPOENAS TO MICROSOFT, INC. SEEKING
IDENTITY AND EMAIL USAGE INFORMATION**

I, Seth Schoen, declare as follows:

1. I am a Senior Staff Technologist with the Electronic Frontier Foundation in San Francisco, California, and I make this declaration on my own personal knowledge. I have worked with computers professionally for over a decade and have testified about communications systems in three courts and before the United States Sentencing Commission.
2. The purpose of this declaration is to provide a general introduction to IP addresses, the use of IP addresses to track location, and how that information could be used to associate a person with others.

Introduction to Internet Protocol Addresses

3. An Internet Protocol address (or "IP address") is a numeric value used to identify the network location of a computer or set of computers on the Internet. Every computer on the Internet needs to have an IP address in order to communicate with other computers on the Internet. Internet routers use the IP address to decide where to send communications

- a particular computer user.¹ The address is normally written as four numbers from 0 to 255 separated by dots.² For example, one of the web servers operated by the Electronic Frontier Foundation uses the address 64.147.188.11, while the District Court for the Northern District of California's web server uses 206.18.146.127, while the District Court for the Northern District of New York's web server uses 199.107.21.60.
4. IP addresses are allocated to Internet service providers (ISPs) in blocks of consecutive addresses out of a worldwide pool of around four billion possible addresses through geographically based non-profit organizations known as regional Internet registries.³ ISPs can further delegate these addresses to smaller entities such as businesses, Internet cafés, or smaller ISPs.⁴ ISPs can also assign an IP address directly to an individual computer. This assignment process is frequently automated and the assignment can be short- or relatively long-term.⁵
 5. Because IP addresses are allocated in this way, they can convey approximate information about a computer's location, how the computer is connected to the Internet, and what individual or entity is using that computer to connect.
 6. Individual users connect using different IP addresses depending on where they are. Multiple users who are using the same local-area network can share a single IP address (most often when they use a shared router or wireless connection) and hence appear to connect to the Internet through the same IP address, whether at different times or at the same time.⁶ If users of the same local-area network are *not* sharing a single IP address,

¹ Eric A. Hall, *Internet Core Protocols: The Definitive Guide*, 37-40 (O'Reilly and Associates,

² See Radia Perlman, *Interconnections Second Edition*, 199 (Addison Wesley Longman, 2000). This declaration uses "Internet Protocol address" to refer to addresses using version 4 of the Internet Protocol ("IPv4"), which has been extensively used worldwide since 1980. Due to exhaustion of the pool of distinct IPv4 addresses, the Internet is now in the course of switching to version 6, which uses significantly longer addresses.

³ See American Registry for Internet Numbers, "Internet Number Resource Distribution," <https://www.arin.net/knowledge/distribution.pdf> (last visited Oct. 22, 2012).

⁴ Hall, *supra* note 1, at 40-41.

⁵ See IP address, http://en.wikipedia.org/w/index.php?title=IP_address&oldid=518867856 (last visited Oct. 22, 2012).

⁶ See Yinglian Xie *et al.*, "How Dynamic Are IP Addresses?," in *Proceedings of the 2007 Conference on Applications, Technologies, Architectures, and Protocols for Computer*

and instead have distinct addresses, their IP addresses will generally be numerically adjacent (with the beginning portion of the address identical, and only the final portion different).⁷

7. An IP address may identify the network through which a network-enabled device (such as a desktop computer, laptop computer, tablet or smartphone) is accessing the Internet. When a portable device moves from an Internet connection on one network (the network connection at one's home, for example) to an Internet connection on another network (a local coffee shop), the IP address associated with the portable device changes to reflect that the device is connected to that particular network. This change is normally carried out completely automatically and is transparent to the user.⁸
8. Many host computers of websites, including the operators of popular web-based e-mail services like Yahoo! Mail, Gmail, and Microsoft Hotmail, maintain logs that list the IP address of visitors along with date and time information. Websites that utilize a log-in feature typically maintain a log of IP addresses and other data associated with the particular user who logged in, such as the date and time of log-in and the duration of time the user visited the website. If a user accesses the website with a portable device from different locations, then the log data about that user will include a variety of different IP addresses. Because of the way they were assigned, these different IP addresses will reflect the location and movement of the device and its owner.

Communications, <https://research.microsoft.com/pubs/63680/sigcomm07-onefile.pdf> (last visited Oct. 22, 2012); Jeff Tyson, "How Network Address Translation Works," <http://computer.howstuffworks.com/nat.htm/printable> (last visited Oct. 22, 2012).

⁷ See "Subnetwork," <http://en.wikipedia.org/w/index.php?title=Subnetwork&oldid=517971549> (last visited Oct. 22, 2012); "Classless Inter-Domain Routing," http://en.wikipedia.org/w/index.php?title=Classless_Inter-Domain_Routing&oldid=518823902 (last visited Oct. 22, 2012).

⁸ Today, the automatic assignment of a new address would be handled by the Dynamic Host Configuration Protocol (DHCP). "Dynamic Host Configuration Protocol," http://en.wikipedia.org/w/index.php?title=Dynamic_Host_Configuration_Protocol&oldid=519194559 (last visited Oct. 22, 2012).

Using IP Addresses and Associated Information to Determine Location

9. A large amount of data accumulated over a lengthy period of time that includes IP addresses and dates and times of usage sessions—as one might get from a heavily trafficked and frequently used web service such as an email provider—can readily present a detailed picture of a person’s movements from one location to another, especially if that person is an avid laptop or tablet user.
10. For instance, a laptop will receive a different IP address when it connects to the Internet from different locations.⁹ If a laptop’s owner uses the machine from her workplace in the morning, a café in the afternoon, and her home in the evening, she will present at least three different IP addresses over the course of a single day. A traveler who brings a laptop to a different country and goes online there will receive an IP address unrelated to the IP address he used at home.
11. The WHOIS service, which can be accessed through web sites such as <http://www.domaintools.com>, is a public database that permits a user to find out to whom a regional Internet registry has allocated a block of IP addresses. A user can input a numerical IP address and obtain the registry’s information about the assignee of that IP address, which might be an ISP or other entity. When IP addresses have been allocated directly to an organization that makes use of them, WHOIS can sometimes associate an IP address with an exact physical location. For example, inputting the IP address 156.128.118.200 into WHOIS shows that the number is associated with the Administrative Office of the U.S. Courts, which is located at One Columbus Circle NE, Washington D.C. On most occasions, however, WHOIS will only associate an IP address with an Internet service provider’s office, which is often in the same region as its subscribers or users but does not reveal their exact locations.
12. WHOIS records and other information sources provide geographic information about where ISPs operate and where they use particular ranges of IP addresses. This means that servers located in California typically have IP addresses traceable to California, servers

⁹ See University of Illinois Campus Information Technologies and Educational Services, “Network Access While Traveling,” <http://www.cites.illinois.edu/network/access/travel.html> (last accessed Oct. 22, 2012).

located in New York typically have IP addresses traceable to New York, and servers in Ecuador typically have IP addresses traceable to Ecuador. This geographic location information is generally publicly available. For instance, the IP address 199.83.220.233 is easily traceable to San Francisco through free websites available to the public such as www.geobytes.com. Even when location information is not publicly available, a subpoena to an ISP can generally elicit the specific geographic location for a particular IP address.

13. Where that is the case, IP address records can still be used in the service of pinpointing a person's location and movements, particularly in the context of litigation where parties can exercise subpoena power. Internet service providers typically maintain records of the physical addresses associated with a given subscriber, for both billing and service purposes, and typically also record historical information about which subscriber used a particular IP address. Once the a litigant has a list of IP addresses, it can subpoena subscriber information from the corresponding ISPs for the specific IP addresses and develop a detailed picture of a person's location and movements from that subscriber information.
14. An IP address may reflect the place where a person accesses a certain Internet service. This information might demonstrate that a person accessed the Internet from a certain physical location, like a building or even particular organization's office. (The IP address ranges used by particular organizations are not necessarily published, but it could sometimes be possible to determine or recognize them on the strength of other records that incidentally reveal them, or via subpoena.)

Using IP Addresses and Associated Information to Determine Associations With Other People

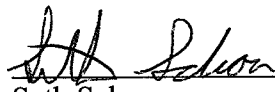
15. A large amount of data accumulated over a lengthy period of time that includes IP addresses and dates and times of usage sessions—as one might get from a heavily trafficked web service such as an email provider—can reveal a person's physical proximity to other Internet users who may share the same IP address. This information could be used to map a person's associates.
16. If Internet usage records showed that two individuals were accessing the Internet from

the same IP address (or numerically proximate IP addresses) on a particular day and time, this would tend to show that they were accessing the same Internet network at the same time. This would strongly suggest they were in the same physical location at the same time and could create a reasonable inference that they met with one another.

Consequences of Disclosure of Long-Term IP Address Records

17. Chevron seeks a nine-year span of IP logs associated with 101 email accounts. If it were made available to Chevron, this information would tell Chevron when the targeted individuals were in the United States or abroad. It would tend to show when they were in a particular town, and when they were at home or at work. It could be used to determine when they visited an office of a particular organization, and when each email account holder was in the same place at the same time as other individuals whose IP addresses have been revealed, potentially meeting with each other.
18. The information Chevron seeks can also reveal intensely personal details about the account holders' lives. A habitual e-mail user might check a given e-mail service multiple times per day, and a long-term view of data about this use could evince quite significant facts relating to work habits, personal relationships, and changes in someone's employment or living situation. For example, if the IP logs show that a person signed into his email account from an IP address associated with another person's home, that information suggests he visited that home. If he signs into his email account using that same IP address late at night and again the following morning, it creates a reasonable inference that he spent that night at that home and may have an intimate relationship with that person who lives there. If he repeats this pattern over time, it might suggest that relationship is a serious one.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed on October 22, 2012.


Seth Schoen

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-mc-65

Hon. Gary L. Sharpe

STEVEN DONZIGER, *et al.*,

Defendants.

**DECLARATION OF JOHN DOE (OWNER OF SIMEONTEGEL@HOTMAIL.COM) IN
SUPPORT OF MOTION OF NON-PARTY JOHN DOE MOVANTS TO QUASH
SUBPOENA TO MICROSOFT INC. SEEKING IDENTITY AND EMAIL USAGE
INFORMATION**

Using my email address, simeontegel@hotmail.com, instead of my actual name, in order to protect my identity pursuant to my rights under the First Amendment and New York law, I declare as follows:

1. I am the owner of the email account simeontegel@hotmail.com. I have personal knowledge of all matters set forth in this declaration. If called upon to do so, I could and would testify to all matters set forth herein.

2. I am providing this declaration under my email address because I wish to protect my rights to free speech and participation in associational activities. I also wish to avoid making moot these very issues, which I have raised in this motion. A true and correct copy of my actual signature for this document resides with my attorneys.

3. On September 12, 2012, I received notice from Microsoft of a subpoena issued in relation to the *Chevron, Corp. v. Donziger et al.*, Case No. 11-cv-0691 (LAK) (S.D.N.Y.) for identifying and email usage information associated with my Hotmail address. I am not a defendant in that case. On September 17, 2012, I received a notice from Google of another

subpoena in the same case issued in the District Court for the Northern District of California seeking information from Google about a Gmail address of mine. I am now moving to quash the subpoena issued to Microsoft for information associated with my Hotmail account. I am separately moving to quash the subpoena seeking my Gmail account information in the District Court for the Northern District of California, as well.

4. I am a full-time journalist. I worked for a non-profit advocacy organization from 2005 to 2008, but prior to and after that period, I worked as a professional journalist. My articles are frequently published in a number of prominent international media outlets.

5. I was involved in an advocacy campaign concerning the environmental impact of Chevron's former oil concession in the Amazon for less than three years, ending in 2008. I was never directly involved in the litigation against Chevron in Ecuador, but performed advocacy on behalf of the communities affected by the activities giving rise to that litigation.

6. I have had my Hotmail email address since at least 1999 and I have used it as my primary address ever since.

7. I almost never used my Hotmail address in connection with my advocacy work concerning Chevron. I had a separate address for correspondence related to that campaign.

8. Keeping my Hotmail account and location information private is very important to me for personal and professional reasons. I am a professional journalist and maintaining journalistic confidentiality regarding my communications has been, and continues to be, an important part of my job.

9. I have used my Hotmail account to engage in personal and professional communications for approximately thirteen years. It is important to me that Chevron not have access to my email usage information and locations during that time period.

10. As a journalist based in Latin America, I work on many stories where my personal security, and that of my confidential sources, is an issue of great concern.

11. Had I known that my email usage information and location would be revealed, my political activity at the time I was assisting with the advocacy campaign related to Chevron would have been chilled.

12. I am no longer active in the advocacy campaign and have not been for some time, but should Chevron gain access to my private email usage records, it would intimidate me and deter me from engaging in activism or litigation against Chevron in the future.

13. Should Chevron gain access to my account information, it would chill my activity more generally as well, knowing that personal information about my email use and location could be revealed concerning any activity that I might engage in. Because privacy and confidentiality is of the utmost importance in my line of work, and my sources rightfully expect our communications will remain confidential, my use of my email account will be chilled if Microsoft releases my account information to Chevron. My participation in future political and activism campaigns will also be chilled should this information be released.

14. I feel harassed by Chevron's attempt to obtain my email usage records and fear further harassment should Chevron gain access to the details of my past involvement in the advocacy campaign against Chevron.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 22, 2012.

simeontegel@hotmail.com
SIMEONTEGEL@HOTMAIL.COM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X	:	
CHEVRON CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Case No. 1:12-MC-65 GLS/CFH
	:	
STEVEN DONZIGER, et al.,	:	
	:	
Defendants.	:	
	:	
-----X	:	

**CHEVRON CORPORATION'S MEMORANDUM OF LAW IN OPPOSITION
TO MOTION OF NON-PARTY JOHN DOE MOVANTS TO QUASH SUBPOENAS
TO MICROSOFT, INC. SEEKING IDENTITY AND EMAIL USAGE INFORMATION**

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I. INTRODUCTION

The subpoena the movants seek to quash requests basic identifying and login information for several email accounts. Courts routinely allow production of such information—particularly where, as here, that information directly supports a legal claim. Because Chevron’s underlying claims and factual allegations have withstood a motion to dismiss and have already been evaluated by the Court in the context of summary judgment—and because each account at issue was used in furtherance of the fraud giving rise to those claims—the motion to quash should be denied.

The context of this motion is Chevron’s claim that a group of U.S. plaintiffs’ lawyers obtained a \$19 billion judgment against Chevron in Ecuador through pervasive fraud involving the illicit sharing of draft documents and other ex parte communications (the “Ecuador litigation”). Courts throughout the United States have, in applying the crime-fraud exception to authorize discovery by Chevron, concluded that the evidence demonstrates that the plaintiffs’ lawyers’ efforts to prosecute that case likely have been tainted by fraud.

The subpoena now at issue was served on Microsoft Corporation on September 19, 2012, in connection with Chevron’s suit under the Racketeer Influenced and Corrupt Organizations Act and New York law (the “RICO action”), in order to obtain information relevant to the core claims that Chevron has asserted. Each of the individual email account owners who bring this motion was intimately involved with the fraud alleged in that action. These purportedly anonymous “John Does” managed legal and public relations strategies that furthered that fraud, helped the plaintiffs’ attorneys tout a fraudulent “independent” expert report in the Ecuadorian court, and arranged meetings with key Ecuadorian political figures that helped fix the judgment against Chevron.

As an initial matter, under settled law the Does lack standing to quash the request for information as to accounts that they do not own. Here, the owners of the majority of the email accounts have not objected to the disclosure of information by Microsoft, making the Does' attempt to quash the subpoena in its entirety particularly inappropriate.

And even as to the email accounts that the Does claim to own, the subpoenaed information will provide evidence about the structure and management of the RICO defendants' fraudulent enterprise, will confirm that many of the defendants' fraudulent acts occurred in the United States (thus rebutting the defendants' jurisdictional and extraterritoriality arguments), and is reasonably calculated to establish how major acts of fraud (such as the creation of the fraudulent expert report and the ghostwriting of the Ecuadorian court judgment itself) were perpetrated. Because those facts are relevant to claims in the RICO action and are overcome by no privilege, Chevron is entitled to the subpoenaed information. Fed. R. Civ. P. 26.

The Does, moreover, are incorrect that compliance with the subpoena would violate their First Amendment rights to anonymous speech or association. The subpoena seeks specific, narrow information that courts routinely direct email providers to disclose. Moreover, the Does are not anonymous in any meaningful sense. They have freely disclosed their connection to the email accounts at issue, and the First Amendment does not protect the Does' efforts to support a fraudulent scheme.

At bottom, this motion is nothing more than the latest effort to delay and impede Chevron's legitimate discovery and keep hidden details of the fraud perpetrated by the RICO defendants. The arguments asserted here are no more substantive than the similar "First Amendment" arguments that the defendants and their allies asserted to try to prevent Chevron from obtaining outtakes of the documentary *Crude*. But in that instance, once the Court pierced

the flawed claims that the requests were overbroad and invasive, the outtakes “sent shockwaves through the nation’s legal communities, primarily because the footage shows, with unflattering frankness, inappropriate, unethical and perhaps illegal conduct.” *In re Chevron Corp.*, No. 1:10-mc-00021-JCH-LFG, slip op. 3-4 (D.N.M. Sept. 2, 2010), Dkt. 77. Chevron respectfully requests that the Court similarly deny this effort to prevent relevant discovery.

II. BACKGROUND

The presiding Judge is well aware of the background of the Ecuador litigation and RICO action. As the Court knows, to support its claims in the RICO action, Chevron has pursued discovery to uncover evidence of the fraud committed by the plaintiffs’ attorneys in the Ecuador litigation (collectively with their clients, the “LAPs”). The LAPs have continually obstructed that effort. *See, e.g.*, Order at 1-2, *In re Chevron Corp.*, No. 10 MC 00002 (LAK) (S.D.N.Y. Dec. 27, 2010), Dkt. 151 (describing special master’s report that Donziger was continually “unresponsive” in his deposition and that his answers were “self[-]serving”—and that they remained so despite repeated instructions and orders striking Donziger’s answers); Order at 2, *In re Chevron Corp.*, No. 10 MC 00002 (LAK) (S.D.N.Y. signed Jan. 21, 2011), Dkt. 171 (noting Donziger’s failure to produce information about an email account containing “documents of obvious possible relevance”); RICO Dkt. 31-21 at 145:8-10¹ (testimony by one of the LAPs’ experts that Donziger affirmatively interceded to try to convince him not to testify in the RICO action); Ex. 1 at 1²

¹ Unless otherwise specified, citations herein to “Dkt.” refer to the docket for case number 1:12-MC-65 GLS/CFH (N.D.N.Y.). Citations herein to “RICO Dkt.” refer to the docket for case number 11 Civ. 691 (LAK) (S.D.N.Y.).

² Unless otherwise specified, “Ex.” refers to exhibits to the Declaration of Alexander Marx, filed concurrently herewith.

(Donziger describing discovery strategy thus: to “fight hard on all fronts all the time and concede nothing, buy as much time as possible”).

Because the LAPs have consistently obstructed discovery, Chevron has been forced to painstakingly uncover information that the LAPs have concealed. The subpoena at issue here is part of those efforts, and seeks information about email accounts identified principally through the review of documents recovered from an image of Donziger’s hard drive. Ex. 2. Specifically, the subpoena seeks information about the users of several email accounts, as well as IP logs and IP address information. *See id.* (Subpoena at 2). Discovery of such information is critical because the LAPs used email accounts to share documents to further their fraudulent scheme. For example, to plan for the secret ghostwriting of the purportedly independent expert’s report, Donziger and his primary Ecuadorian counterpart, Pablo Fajardo, set up an email account on which they loaded information that each could access. To hide the fraudulent nature of that information, Fajardo told Donziger “not [to] insert any names in the document,” but instead to use the code names “Lagarto 2” and “Lagarto 3.” RICO Dkt. 402-13 (Champion Decl. Ex. 2315); RICO Dkt. 398 ¶ 141.

The Does responsible for the pending motion claim to own only three of the 30 email accounts listed in the subpoena: simeontegel@hotmail.com, mey_1802@hotmail.com, and lupitadeheredia@hotmail.com. *See* Memorandum Supporting Motion to Quash (“Mem.”) at 3; Dkt. 2-2 ¶ 3. The Does do not claim that they are authorized to represent any other account holders listed in the subpoena. *See* Mem. 3.

Chevron believes that the owners of these accounts are, respectively, Simeon Tegel, Maria Eugenia Yopez, and Lupita de Heredia. Chevron seeks information about these accounts because—although Chevron has not named these Does as defendants—the evidence Chevron has

obtained shows that these accounts were used to help the LAPs further their fraudulent enterprise, and that each Doe has been intimately involved in the LAPs' fraudulent enterprise.

Simeontegel@hotmail.com is apparently an email account of Simeon Tegel, who was from 2005 to 2008 the Communications Director of Amazon Watch, an entity funded and directed by Steven Donziger to facilitate the LAPs' fraudulent scheme. *See* RICO Dkt. 283 ¶ 18(f) (naming Amazon Watch a non-party co-conspirator in the RICO action and describing how it contributed to the RICO defendants' fraudulent scheme). Tegel publicized and distributed the fraudulent Cabrera report and helped Donziger further the LAPs' fraud by writing false letters to news entities. Those letters trumpeted the LAPs' baseless claim that TexPet's "remediation . . . [w]as a sham as confirmed by laboratory samples provided by a court-appointed expert and by Chevron itself," Ex. 3, and praised Cabrera's qualifications and independence, Ex. 4. These and other activities were all part of a public relations campaign to legitimate a fraudulent judgment against Chevron. *See, e.g.*, Ex. 5.

Mey_1802@hotmail.com is apparently an email account of Maria Eugenia Yopez. Yopez worked as a strategist and liaison for Donziger and the LAPs. She set up meetings between the LAPs' attorneys and Ecuadorian political figures, including the President of the Supreme Court, Ex. 6; Ex. 7, and officials of the Ministry of Health, Ex. 8. Those meetings helped fix the judgment for the LAPs.

Lupitadeheredia@hotmail.com is apparently an email account of Lupita de Heredia. Heredia worked closely with Donziger on press releases, media contacts, and media appearances that furthered the scheme against Chevron. She was so enmeshed in the LAPs' activities that she gave assignments to the LAPs' interns. Ex. 9.

The remaining email accounts listed in the subpoena were also apparently created by people who were as or more involved in the RICO defendants' fraud. Those accounts generally fall into four categories:

- Accounts Used by the LAPs' Legal Team Personnel. These include muerteenlaselva@hotmail.com; julprieto@hotmail.com; juanpasaenz@hotmail.com; alex_anchundia2007@hotmail.com; gabrielitaep@hotmail.com; duruti@hotmail.com; Monica_pareja@hotmail.com; renatog85@hotmail.com; and criscadena@hotmail.com.
- Accounts Used by FDA Selva Viva Personnel. These include gaer69chzpr@hotmail.com; donaldmoncayo@hotmail.com; erikatorres_19@hotmail.com; hannagoanna@hotmail.com; maryeji20@hotmail.com; pirancha@hotmail.com; nick_aussie@hotmail.com; selvaviva2004@hotmail.com; and hjploro@hotmail.com.
- Accounts Used by Cabrera and his Associates. These include ingracobrerav@hotmail.com; rcabrerav@hotmail.com; cristobalvillao@hotmail.com; and aulestiajuan@hotmail.com.
- Accounts Used by Ecuador Officials who had Dealings with the LAPs. These include patriciogarcia_2009@hotmail.com; albertoguerrab@hotmail.com; and osimonc@hotmail.com.

The remaining two addresses are an address set up by Pablo Fajardo to facilitate the fraudulent ghostwriting of the Cabrera report (examen_pericial@hotmail.com) and an address that was apparently used by Dr. Luis Alberto Villacreces Carvajal, a technical expert employed by the LAPs (luisvillacreces@hotmail.com).³

Importantly, each of these accounts appears to have been owned by an employee or agent of the RICO defendants or their co-conspirators, or has been identified as being directly involved in the fraud.

³ The account faisal_baki@hotmail.com has been dropped from Chevron's subpoena, and thus is not included here. Declaration of Rebecca Gray ("Gray Decl.") ¶ 20, Ex. K.

For each account, Chevron seeks to confirm identifying information about the user, and to obtain IP log and address information. Ex. 2 (Subpoena at 2). Donziger himself served similar subpoenas on email provider Yahoo!—seeking *his own* user and IP information—in discovery proceedings in the RICO action. *See* Ex. 10. The subpoena seeks information generated since the Ecuador litigation was filed in 2003. Ex. 2 (Subpoena at 2). That information will support Chevron’s RICO claims. *See* Part III.B.2., *infra*.

In each of its meet-and-confer sessions with subpoenaed individuals or their counsel, Chevron has offered to limit this timeframe further, to the period that each individual worked with the LAPs. *E.g.*, Gray Decl. Ex. E & ¶ 16. The Does, however, have been largely unwilling to disclose the precise date ranges that they worked with the LAPs, through meet-and-confer sessions or in their motion papers: Indeed, two of the moving Does have not even provided declarations to this Court. The Does have provided a single declaration representing that “John Doe” worked with the LAPs during one time period, but not stating with the particularity the duration of that work or confirming whether he worked with the LAPs at other times. Dkt. 2-4 (Declaration of “John Doe” (Simeon Tegel)).

III. ARGUMENT

A. The Does Lack Standing to Challenge the Subpoena as a Whole and May Challenge Its Application Only to the Accounts that They Own.

A litigant lacks standing to challenge a subpoena issued to a third party, unless the litigant possesses a personal right or privilege regarding the documents sought. *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975). Nor may a litigant challenge a subpoena based on the alleged rights of others when those others do not challenge the subpoena. *See Nova Prods., Inc. v. Kisma Video, Inc.*, 220 F.R.D. 238, 241 (S.D.N.Y. 2004); 9A Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 2035 (note 8 and accompanying text).

The Does claim to own only three of the 30 email accounts identified in the subpoena to Microsoft. *See* Mem. 3; Dkt. 2-2 ¶ 3. The Does do not identify any right or privilege that they may have as to the remaining accounts. And the other account holders have chosen not to object to Chevron's requests or have resolved their concerns about the subpoena with Chevron. The Does therefore lack standing to challenge the subpoena's application to the accounts that they do not own, and their motion to quash must be limited to the three accounts that they do own. *See, e.g., Malmberg v. United States*, No. 5:06-cv-1042 (FJS/GHL), 2010 WL 1186573, at *1 (N.D.N.Y. Mar. 24, 2010); *Chevron Corp. v. Salazar*, No. 11 Civ. 3718 (LAK), 2011 WL 2207555, at *2 n.11 (S.D.N.Y. June 2, 2011). In the cases the Does rely upon, in contrast, the party opposing the subpoena suffered injury in fact or was itself subpoenaed. The Does' request to quash the subpoena in its entirety (*see, e.g.,* Mem. 19-20) must be denied, and their request must be confined to accounts they own.

B. The Subpoena Makes Reasonable Requests that Courts Routinely Grant.

1. Courts Routinely Require Production of the Information that Chevron Seeks.

For each of the Does' accounts, Chevron seeks only two categories of information: (1) user identification information, and (2) usage information such as IP logs and IP address information. *See* Ex. 2 (Subpoena at 2). Such information is routinely sought from email service providers in civil discovery. *See, e.g., In re Roebbers*, No. 12-mc-80145-RS (LB) 2012 WL 2862122, at *3 (N.D. Cal. July 11, 2012) ("Internet service providers and operators of communications systems are generally familiar with this type of discovery request."). And courts consistently uphold subpoenas seeking such information. *See, e.g., London v. Does 1-4*, 279 F. App'x 513, 514-15 (9th Cir. 2008) (affirming denial of motion to quash subpoena on Yahoo! seeking documents disclosing IP address from which email accounts were created); *John Wiley &*

Sons, Inc. v. Does 1-35, 12 Civ. 2968 (RWS), 2012 U.S. Dist. LEXIS 182741 (S.D.N.Y. Dec. 28, 2012) (denying motion to quash subpoena served on defendant's internet service provider); *AF Holdings LLC v. Doe*, No. 12-cv-02416-WHA, 2012 U.S. Dist. LEXIS 75806, at *2-3 (N.D. Cal. May 31, 2012) (granting early discovery of IP log, for purpose of determining identity of allegedly infringing IP address holder); *Xcentric Ventures, LLC v. Karsen, Ltd.*, No. 11-cv-01055-PHX-FJM, 2012 U.S. Dist. LEXIS 121888, at *1-3 (D. Ariz. Aug. 28, 2012) (denying motion to quash subpoena seeking discovery of IP address information from Google). Critically, the subpoena does not seek the contents of email communications. *See Doe v. SEC*, No. 11-mc-80184 CRB (NJV), 2011 WL 4593181, at *4 (N.D. Cal. Oct. 4, 2011) ("addressing information" is less protected than the content of communications).

Chevron is entitled to the subpoenaed information even though the account owners listed in the Microsoft subpoena are non-parties. Each of those account owners was an employee of the LAPs, is an attorney of a RICO defendant, is a co-conspirator, or was otherwise an agent of the LAPs. Each account owner is therefore similarly situated to the defendants in cases in which a court has upheld a subpoena seeking identifying information and IP login information from the defendants themselves. *Cf. Chevron Corp. v. Salazar*, No. 11 CV 03718 (LAK) (JCF), Dkt. 180 at 25 (S.D.N.Y. Aug. 3, 2011) ("Courts have repeatedly found that employers have control over their employees" and can be required to produce documents in their employees' possession.); *Chevron Corp. v. Salazar*, No. 11 CV 03718 (LAK) (JCF), Dkt. 101 at 3 (S.D.N.Y. Aug. 3, 2011) ("[L]awyers are agents for their clients."). The law requiring defendants to comply with a subpoena therefore applies fully to the non-party account owners listed in the subpoena here.

2. The Subpoenaed Information Will Materially Support Chevron's Claims in the RICO Action.

The information that Chevron seeks, moreover, is well within the bounds of information that it is entitled to pursue in the RICO action. The Federal Rules provide that a party is entitled to discover information “that is relevant to [its] claim[s]” and “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1).⁴ Information concerning the Does’ accounts is directly and materially relevant to Chevron’s claims.

As summarized above, each Doe was involved in the LAPs’ scheme against Chevron.⁵ The subpoenaed information about the Does’ accounts will directly and materially support Chevron’s RICO action claims in several ways.

First, the subpoenaed information will show whether certain account holders had access to the RICO defendants’ internal documents and data. The RICO defendants and their affiliates established email accounts to store and exchange documents in furtherance of the fraud. RICO Dkt. 402-13 (Champion Decl. Ex. 2315); RICO Dkt. 398 ¶ 141. Such accounts were used to plan the ghostwritten “independent” expert report. *Id.* Whoever wrote the \$19 billion judgment, moreover, had access to the RICO defendants’ unfiled documents. Information about who had such access—and when they may have accessed those documents—will provide information

⁴ See also Fed. R. Civ. P. 45, 1946 advisory committee’s note (a subpoena has “the same scope as provided in Rule 26(b)”); 1970 advisory committee’s note (“[T]he scope of discovery through a subpoena is the same as that applicable to . . . the other discovery rules.”).

⁵ The Does’ Memorandum does not once directly describe their connection to the RICO defendants. The Does instead draw attention elsewhere—for example, with a straw man argument related to an email account *that is not before the Court* (the account of Jon Heller). See Mem. 4, 13, 18. But it is undisputed that Chevron withdrew its request regarding that account shortly after Mr. Heller reached out to Chevron about it. See Gray Decl. ¶ 19. The Does’ unwillingness to acknowledge the true nature of their association with the LAPs stems, no doubt, from the fact that each of the Does was intimately involved in the conduct at issue in the RICO action.

about how those documents came to be filed as the work of the “independent” court expert and how some of that information was found verbatim in the \$19 billion judgment itself. *See* Ex. 2; RICO Dkt. 550 at 27-30.

Second, IP information will prove that substantial portions of the RICO predicate acts originated in the United States. That is critical because—although the RICO defendants’ scheme was designed by U.S. lawyers, carried out largely in the United States, and directed at a U.S. victim—the RICO defendants have contended that Chevron’s complaint seeks an extraterritorial application of RICO. RICO Dkt. 243 at 2-5.

Third, identifying information about the owners of the accounts—which were used to further the various RICO predicate acts of extortion, wire fraud, and money laundering—will provide evidence regarding the structure and management of the RICO enterprise. That evidence is essential to a RICO claim. *See Boyle v. United States*, 556 U.S. 938, 951 (2009).

Fourth, although Chevron likely knows the Does’ identities, Chevron remains entitled to regularly collected business records to substantiate those identities at trial. *See, e.g.*, Fed. R. Evid. 803(6); *see also, e.g., Griffin v. Maryland*, 19 A.3d 415, 421 (Md. 2011) (describing need for guarantees of authenticity before admitting internet evidence); *People v. Clevestine*, 891 N.Y.S.2d 511, 514 (N.Y. App. Div. 2009) (same). Chevron is entitled to evidence that will show the jury who the relevant account users are. The subpoenaed documents will provide Chevron with the needed evidence.

3. The Subpoena Is Not Overbroad.

The Does contend that the subpoena is overbroad because it seeks information about 30 email accounts over the course of nine years and because much of the information sought is irrelevant to Chevron’s claims. Mem. 20. Elsewhere, the Does add complaints about two subpoenas that were served on email providers who were not subject to the subpoena before this

Court. Mem. 12, 18. The Does even complain about a non-Doe account holder who Chevron has removed from its subpoena. *See* Mem. 4, 13, 18; Gray Decl. ¶ 19 & Ex. J. But, as already explained, the Does possess standing to challenge the subpoena only as to the three accounts that they own. *See* Part III.A., *supra*. As a result, their arguments as to other email account owners are not properly before this Court.

The overbreadth cases cited by the Does (*see* Mem. at 19) do not allow them to depart from well-settled principles of standing. Indeed, in each of those cases the party claiming overbreadth possessed standing to make that challenge. *See McMann v. SEC*, 87 F.2d 377, 378 (2d Cir. 1937) (injunction against disclosure of stock account records sought by account holder); *United States v. IBM*, 83 F.R.D. 99 (S.D.N.Y. 1979) (motion to quash brought by the subpoenaed party); *United States ex rel. Sasaki v. N.Y. Univ. Med. Ctr.*, No. 05 Civ. 6163, 2011 U.S. Dist. LEXIS 95059, at *4-5 (S.D.N.Y. Aug. 23, 2011) (motion to compel opposed by subpoenaed litigant). The Does cite no case in which a recipient of a subpoena was allowed standing to challenge the subpoena as to another party. Each of those cases accords with the settled rule that a litigant may not challenge a subpoena based on the alleged rights of others. *See, e.g., Nova Prods.*, 220 F.R.D. at 241.

Nor is there any force to the argument that the subpoena is overbroad as applied to the Does. The subpoena only seeks information that remains in Microsoft's custody or control since the Ecuador litigation began in 2003. Ex. 2 (Subpoena at 2). Chevron has also made clear that it is willing to narrow its requests to ensure that the subpoena yields only relevant information. *E.g.*, Gray Decl. Exs. C, D, E, L. Chevron has agreed, for example, to tailor the time ranges for its request to ensure that the information produced covers only the time periods during which the

Does associated with the LAPs. *Id.* The Does, however, have not provided sworn evidence regarding the appropriate time periods.

“[T]he party seeking to quash [a] subpoena bears the burden of demonstrating that the subpoena is overbroad, duplicative, or unduly burdensome.” *Schoolcraft v. City of New York*, No. 10 Civ. 6005 RWS, 2012 WL 2161596, at *2 (S.D.N.Y. June 14, 2012), *reconsideration denied*, 2012 WL 2958176 (S.D.N.Y. July 20, 2012); *see also Libaire v. Kaplan*, 760 F. Supp. 2d 288, 291 (E.D.N.Y. 2011) (same); *Snider v. Lugli*, CV 10-4026 JFB AKT, 2011 WL 5401860 (E.D.N.Y. Nov. 4, 2011) (same); 9A Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 2459 (3d ed.) (note 7.1 accompanying text). Here, however, the Does have failed to provide unequivocal sworn testimony supporting their assertion that certain time periods are *irrelevant* with regard to their email addresses, and have refused Chevron’s offer through meet and confer to limit the time period of the subpoena. *See* Gray Decl. Ex. M. As a result, they fail to meet their burden to establish that the subpoena is overbroad. *See Schoolcraft*, 2012 WL 2161596, at *2, *13.

C. The Subpoena Accords with First Amendment Standards.

The Does next contend that the subpoena violates their First Amendment rights to anonymity and to association. Mem. 7-19. This argument also has no merit.

1. Compliance with the Subpoena Will Not Infringe Any Right to Anonymity.

a. The Right to Anonymity Does Not Apply Here.

The First Amendment protects anonymity when it will provide “a shield from the tyranny of the majority,” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995), or will “foster open communication and robust debate” by eliminating the burdens of others “knowing all the facts about one’s identity,” *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999). Those rationales for protecting anonymity disappear where, as here, a speaker has

exposed—indeed, publicized—his identity or his identity is otherwise publicly known. In those circumstances, the speaker simply has not made the protected “decision to remain anonymous.” *McIntyre*, 514 U.S. at 342.

In this case, accordingly, the Microsoft subpoena does not affect the Does’ right to anonymous speech because Tegel, Yopez, and Heredia—the Does—are not anonymous. That is of their own doing: Tegel, Heredia, and Yopez used their names or initials when creating the addresses associated with their email accounts. And they have long publicized their use of these particular email addresses and their association with the LAPs. Tegel signed emails and wrote letters to news outlets using his name. Exs. 3, 5. Indeed, a Google search of “Simeon Tegel” returns, as its second result, Tegel’s personal website, which prominently lists his Hotmail address. Ex. 12. Heredia gave assignments to the LAPs’ interns. Ex. 9. And Yopez participated in radio interviews about her involvement in the LAPs’ public relations efforts. Ex. 13. Through their very public activities, the Does have affirmatively chosen *not* “to remain anonymous.” *McIntyre*, 514 U.S. at 342. The long-public nature of their activities, moreover, belies any claim that the Does need protection from a “danger” of having their association with the LAPs “exposed.” Because the Does advertised their identities and involvement with the LAPs, there simply is no basis for their artificial claim to anonymity.

More fundamentally, although the Does cast their association with the LAPs as one of political speech or advocacy, Mem. 7, 12, 14, 15, the record is clear that they in fact provided significant assistance to the LAPs’ fraudulent enterprise. *See* Part II, *supra*. The First Amendment does not protect fraudulent activity or associations that further a conspiracy. *See, e.g., Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 612 (2003); *McIntyre*, 514 U.S. at 357; *Branzburg v. Hayes*, 408 U.S. 665, 697 (1972) (declining to afford First

Amendment protection to the “concealment of crime”); *United States v. Konstantakakos*, 121 F. App’x 902, 905 (2d Cir. 2005) (“[I]t has long been established that the First Amendment does not shield knowingly false statements made as part of a scheme to defraud.”); *United States v. Sattar*, 395 F. Supp. 2d 79, 101 (S.D.N.Y. 2005) (the First Amendment “lends no protection to participation in a conspiracy, even if such participation is through speech”); *In re Jean-Baptiste*, No. M 11-188, 1985 WL 1863, at *1 (S.D.N.Y. July 5, 1985) (same). The Court should reject the Does’ effort to keep illicit activities concealed.

b. Chevron’s Interest in Disclosure Outweighs Any Claimed Right to Anonymity.

Even if the Does had any claim to anonymity, which they do not, Chevron’s interest in discovering the limited subpoenaed information would outweigh it.

When ruling on a motion to quash that seeks to preserve the movant’s anonymity, a court must balance the need for disclosure against First Amendment interests. *See Sony Music Entm’t Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 564-65 (S.D.N.Y. 2004) (Chin, J.). Because the First Amendment does not protect the Does’ efforts to further fraudulent activity or to aid a conspiracy, this Court should apply “the lowest bar that courts have used” in considering whether to order disclosure of an anonymous speaker’s identity: it should consider whether “the claim for which the plaintiff seeks the disclosure” meets “the motion to dismiss or good faith standard.” *In re Anonymous Online Speakers*, 661 F.3d 1168, 1175 (9th Cir. 2011) (discussing the standards applied across circuits—including within the Second Circuit—to evaluate different First Amendment anonymity claims). Here, the RICO defendants’ motion to dismiss Chevron’s claims has already been denied in relevant part (*see Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229 (S.D.N.Y. May 14, 2012) (Westlaw version)) and the Court has found that there is no genuine dispute of material fact with respect to many of Chevron’s core allegations regarding the RICO

defendants' fraud and misconduct in the Ecuador litigation (*see* RICO Dkt. 550)—conclusively showing that Chevron meets the low disclosure standard.

Even if this Court were to apply the higher “prima facie standard”—used, for example, by the Southern District of New York in *Sony Music Entm’t Inc. v. Does 1-40*—Chevron would meet that standard as well. When ruling on a motion to quash that seeks to preserve the movant’s anonymity, courts in the Second Circuit weigh “the need for disclosure against First Amendment interests” by considering: (1) the prima facie strength of the plaintiff’s claims of injury; (2) the specificity of the discovery request; (3) the absence of alternative means to obtain the subpoenaed information; (4) the plaintiff’s need for the information; and (5) the movant’s expectation of privacy in the subpoenaed information. 326 F. Supp. 2d at 564-65; *see Arista Records v. Doe 3*, 604 F.3d 110, 119 (2d Cir. 2010) (endorsing *Sony Music* test). Applying that analysis, courts in this Circuit have denied motions to quash subpoenas that sought discovery of identifying information where the balancing of these factors overall led to the conclusion that the objecting party was not entitled to protection. *See, e.g., John Wiley & Sons, Inc. v. Does 1-35*, No. 1:12-cv-02968-RWS, 2012 U.S. Dist. LEXIS 182741 (S.D.N.Y. Dec. 28, 2012) (Sweet, J.); *Arista Records LLC v. Does 1-16*, Civ. No. 1:08-CV-765 (GTS/RFT), 2009 WL 414060, at *6 (N.D.N.Y. Feb. 18, 2009), *aff’d*, 604 F.3d 110 (2d Cir. 2010); *see also Next Phase Distrib., Inc. v. Does 1-138*, No. 11 Civ. 9706 (KBF), 2012 WL 691830 (S.D.N.Y. Mar. 1, 2012) (denying motion to quash subpoena seeking IP login information related to times and dates that the subscriber allegedly downloaded a copyrighted film).⁶

⁶ The *Sony Music* test rests on several considerations: that anonymous speech does not enjoy absolute protection, *see* 326 F. Supp. 2d at 562; that such speech enjoys especially scant protection when the objecting litigant seeks to use anonymity to conceal misconduct, *see id.* at

Here, these factors both separately and collectively support disclosure.

First, Chevron has made a strong showing of a prima facie claim of actionable harm. The Second Circuit has held that this factor may be satisfied by a well-pleaded complaint and a supporting exhibit and declaration. *Arista Records LLC*, 604 F.3d at 123. Chevron has gone well beyond that showing. In denying the LAPs’ motion to dismiss and in finding that evidence that the Ecuador litigation was “tainted by fraud” was “uncontradicted” on summary judgment, the Court has concluded that Chevron has made at least a prima facie showing of actionable harm. *See Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229 (S.D.N.Y. 2012); RICO Dkt. 550. Indeed, *seven* federal courts have determined that the RICO defendants committed fraud sufficient to pierce the protection against discovery of attorney-client privileged documents.⁷ Although the movants contend that Chevron must establish a prima facie case against each of them personally,

562-63, 565-66 and that information to support a legitimate legal claim has considerable value, *see id.* at 564-66. Here, where there is clear evidence that the so-called “Does” assisted the Defendants’ fraudulent scheme, the same governing considerations apply whether the litigant moving to quash is a party or non-party.

⁷ *See In re Chevron Corp.*, 633 F.3d 153, 166, 168 (3d Cir. 2011) (holding that Chevron had made a “prima facie showing of a fraud that satisfies the first element of the showing necessary to apply the crime-fraud exception to the attorney-client privilege” and remanding for *in camera* review); *In re Chevron Corp.*, No. 11-24599-CV, 2012 WL 3636925, at *14, *16 (S.D. Fla. June 12, 2012) (granting Chevron’s motion for discovery of information “pertain[ing] to a large scale fraud upon an American corporation”); *Chevron Corp. v. Page*, No. RWT-11-1942, Oral Arg. Tr. 73:7-9, 73:25-74:10 (D. Md. Aug. 31, 2011) (applying crime-fraud exception to attorney-client privilege); *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 636 (S.D.N.Y. 2011), *rev’d on other grounds sub nom.*, *Chevron Corp. v. Naranjo*, 667 F.3d 232 (2d Cir. 2012) (“There is ample evidence of fraud in the Ecuadorian proceedings.”); *In re Chevron Corp.*, No. 10-cv-1146-IEG(WMC), 2010 WL 3584520, at *6 (S.D. Cal. Sept. 10, 2010) (applying crime-fraud exception); *In re Chevron Corp.*, Nos. 1:10-mc-00021-22, slip op. 3-4 (D.N.M. Sept. 2, 2010) (noting evidence of the “inappropriate, unethical and perhaps illegal conduct” by LAPs’ attorneys); *Chevron Corp. v. Champ*, Nos. 1:10-mc 27, 1:10-mc 28, 2010 WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010) (applying crime-fraud exception because “what has blatantly occurred in this matter would in fact be considered fraud by any court.”).

there is no reasonable dispute that each acted as an agent or employee of the RICO defendants or their co-conspirators.

Second, Chevron has made a narrow and specific discovery request concerning the Does. Chevron has sought specific account usage and user documents that will “lead to identifying information” (*Sony Music*, 326 F. Supp. 2d at 566) that will assist Chevron’s efforts to establish where the Does were located when RICO predicate acts took place, to learn details about the structure and management of the RICO enterprise, and to uncover further use of computers in connection with the fraudulent “independent” expert report and ghostwritten \$19 billion judgment. *See* RICO Dkt. 402-13 (Champion Decl. Ex. 2315); RICO Dkt. 398 ¶ 141; RICO Dkt. 550 at 27-30. Chevron has not sought a broad swath of information—such as the *contents* of the Does’ emails—but has instead served narrow requests that have withstood frequent judicial scrutiny. *See* Part III.B.1., *supra*. And the movants have not submitted any sworn evidence affirming that there is a period of time when they were *not* working with the LAPs.

Third, Chevron has been unable to obtain the specific information sought in the subpoenas through other means. Chevron has pursued multiple discovery actions to obtain information about the relationships between the RICO defendants and non-parties, and the relevant interactions between the two groups. Despite those efforts, Donziger, the LAPs, and their agents and co-conspirators have repeatedly prevented Chevron from accessing much of that evidence. *See* Part II, *supra* (summarizing some of the efforts to evade and obstruct discovery). Given that obstruction, the subpoenas here are the best calculated means—and are, indeed, necessary—to allow Chevron to obtain the information that the LAPs have continually concealed. At most, the Does suggest that Chevron should seek these facts from the RICO defendants themselves. But computer users do not often record IP login information, much less the login information of the

computers of those who work with them. In fact, in this very case, Donziger was forced to subpoena Yahoo! to obtain access to the exact kind of information Chevron seeks *about his own account*. See Part II, *supra*. Seeking this information from Microsoft is not only the most direct way to proceed; it is the best way to ensure that the information has sufficient indicia of reliability to make it admissible. See Fed. R. Evid. 901(a).

Fourth, the subpoenaed information is important to Chevron’s claims in the RICO action. Chevron already has obtained thousands of emails sent to and from the RICO defendants and those associated with them, including the Does. These emails provide evidence of fraud, extortion, and other misconduct. As explained above, the identities of the email account users involved—and the location from which those users operated—will help Chevron establish where the Does were located when RICO predicate acts took place, to learn details about the structure and management of the RICO enterprise, and to obtain details about the fraudulent expert report and judgment. See Part III.B.2., *supra*.

Fifth, the Does have only a “minimal expectation of privacy” in the subpoenaed material. *Sony Music*, 326 F. Supp. 2d at 566. The Does used their own names or initials in the email addresses associated with their accounts. And they did so using an email service (Microsoft Hotmail) that warns users that their identifying information will not be kept private if it is subpoenaed. Ex. 14. That warning—particularly when coupled with the Does’ efforts to publicize their identities and actions—renders the Does’ privacy interest “minimal” at best, *Doe I v. Individuals*, 561 F. Supp. 2d 249, 254 (D. Conn. 2008) (finding “minimal” expectation of privacy based on a similar internet service provider warning), and is readily overcome by the need for disclosure. See also *Doe v. SEC*, No. 11-mc-80184 CRB (NJV), 2011 WL 4593181, at *4 (N.D. Cal. Oct. 4, 2011) (noting that courts “routinely reject the argument that subscribers have a

privacy interest in their account information” and rejecting motion to quash subpoena that “d[id] not seek the content of any of Movant’s communications but rather ‘addressing information’ that will allow the SEC to identify Movant”); *In re United States*, 830 F. Supp. 2d 114, 131-33 (E.D. Va. 2011) (holding that petitioners had no expectation of locational privacy in IP logs when they voluntarily transmitted their IP addresses to Twitter).

Because all factors weigh strongly in favor of disclosure, the Does’ “right to remain anonymous”—if it could even be said to apply here—must “give way to [Chevron’s] right to use the judicial process to pursue” its claims. *Sony Music*, 326 F. Supp. 2d at 567.

The Does ask this Court to apply a four-part standard articulated by a judge in the Western District of Washington in *Doe v. 2TheMart.com Inc.*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001). The *2TheMart.com* test looks to whether: (1) the subpoena was issued in good faith and not for an improper purpose; (2) the information sought relates to a core claim; (3) the identifying information is directly and materially relevant to that claim; and (4) information sufficient to establish that claim is unavailable from any other source. *2TheMart.com*, 140 F. Supp. 2d at 1095.⁸ But application of the *2TheMart* standard does not change the result here. As noted above, in this case the subpoenaed information relates to a core claim, the subpoenaed information is directly and materially relevant to that claim, and Chevron has shown that it cannot obtain that information from another source. Chevron therefore satisfies the second, third, and fourth *2TheMart.com* factors. And, in seeking the subpoenaed information, Chevron has acted in good faith: Chevron has well-supported RICO claims, the accounts at issue were used by persons

⁸ The Does are wrong to contend that, to obtain disclosure, a plaintiff “must show” that it prevails on all four *2TheMart.com* factors. Mem. 13. To the contrary, the court in *2TheMart.com* described its test as an overall balancing analysis of several factors, not four elements that must all be met. *See 2TheMart.com*, 140 F. Supp. 2d at 1095-97.

who were involved in the RICO defendants' illicit enterprise, and Chevron has been willing to work with the Does to tailor its request to uncover only relevant information. This is more than enough to support the subpoenas under *2TheMart.com*.

Indeed, the Ninth Circuit has described the *2TheMart.com* standard as “fall[ing] somewhere between the motion to dismiss and the prima facie standards” in the extent to which it favors disclosure. *Anonymous Online Speakers*, 661 F.3d at 1176. That description apparently rests on the fact that—unlike the prima facie standard set forth in *Sony Music*—*2TheMart.com* does not focus on whether a plaintiff has established a prima facie case, but instead merely *balances* whether the subpoena was “issued in *good faith*” (a clearly lower bar) against other factors. Because Chevron satisfies the higher prima facie standard, it *a fortiori* satisfies the *2TheMart.com* standard. Thus, under even the Does' inapplicable standard, the subpoenaed information must be disclosed.

2. Compliance with the Subpoena Will Not Infringe Any Right of Association.

The Does also cannot avoid enforcement of the subpoena based on a claimed infringement of their freedom of association, because they cannot “ma[ke] a *prima facie* showing that disclosure would infringe” their associational rights. *N.Y. State Nat'l Organization for Women v. Terry*, 886 F.2d 1339, 1354 (2d Cir. 1989).

To begin with—and as explained above—the Does have disclosed their identities. The Does, moreover, have freely and publicly associated themselves and their identities with the LAPs and their lawsuit against Chevron. The genie has left the bottle: Nothing about *re*-disclosure of the Does' identities could hamper their associational freedom.

Indeed, if disclosure could have harmed the Does at all, that (self-inflicted) harm would have already occurred. Yet the Does do not identify any harm that has ever hampered their associational freedom. The Does have long publicized their association with the LAPs and were

open about their identities during that association. *See* Part II, *supra*. Yet the Does do not show that their open involvement with the LAPs caused them to face harassment, threats, or anything else that chilled their speech. *See* Dkt. 2-2, *passim*. The absence of such harm stands in stark contrast to the baseless speculation set forth in the declaration by “John Doe” Simeon Tegel. Tegel states that he “believes his use of his email account to communicate with his sources would be chilled if Chevron obtained details about his account” and that he “would be intimidated and deterred from engaging in activism or litigation against Chevron in the future” if Microsoft complies with the subpoena. Mem. 4. That speculation, however, is inexplicable in light of Tegel’s long public association with the LAPs (he worked for the Donziger-funded, RICO defendant co-conspirator Amazon Watch from 2005 to 2008), which has apparently never caused him such harms. *See, e.g.*, Ex. 5. Even if Tegel had experienced such harms, of course, they would not be protected by invoking the freedom of association here: He unmasked himself and forfeited any right to conceal his identity.

Even if the Does could make a *prima facie* showing of potential harm, moreover, they still cannot overcome Chevron’s compelling interest in the subpoenaed material under the governing legal standards. *See Terry*, 886 F.2d at 1355; *In re Grand Jury Proceedings*, 776 F.2d 1099, 1103 (2d Cir. 1985). First, there is a substantial relationship between that interest and the subpoenaed information. *See* Part III.B.2, *supra* (discussing how the subpoenaed information will support Chevron’s claims). Second, Chevron cannot obtain the material other than by subpoenaing Microsoft. *See* Part III.C.1.b., *supra* (discussing the third *Sony Music* factor). And third, Chevron’s request does not unnecessarily affect protected rights. Chevron has made a significant showing that the LAPs committed massive fraud and that the Does worked with them to further

that fraud. The First Amendment does not protect fraud or associations that further a conspiracy. *See* Part III.C.1.a., *supra* (collecting authorities).

Indeed, the Does seem to concede the compelling need for disclosure, acknowledging that “[t]he government may well have a compelling interest in making sure that parties to litigation receive the information they need to properly litigate their cases in the interest of the fair administration of justice.” Mem. 18. Chevron is entitled to disclosure.

IV. CONCLUSION

For the foregoing reasons, Defendants’ motion to quash should be denied.

Dated: January 15, 2013

Respectfully submitted,

By: s/ Randy M. Mastro
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 Facsimile: 518.427.0614
 paul@derolaw.com

Attorneys for Chevron Corporation

101397310.20

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X	:	
CHEVRON CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Case No. 1:12-MC-65 GLS/CFH
	:	
STEVEN DONZIGER, et al.,	:	
	:	
Defendants.	:	
	:	
-----X	:	

**DECLARATION OF REBECCA GRAY ON BEHALF OF
CHEVRON CORPORATION IN OPPOSITION TO MOTIONS TO QUASH A
SUBPOENA TO MICROSOFT CORPORATION**

I, Rebecca Gray, declare:

1. I am an attorney licensed to practice law in the State of Maryland and the District of Columbia. I am an associate in the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Chevron Corporation (“Chevron”) in the above-captioned matter. I make this declaration, based on personal knowledge, on behalf of Chevron in opposition to two separate motions to quash Chevron Corporation’s subpoena to Microsoft Corporation (Dkts. 1 and 2).

2. Attached hereto as **“Exhibit A”** is a true and correct transcription of a voice message from Larry R. Veselka, counsel for certain Defendants in the above-captioned proceeding, which was received by my colleague, Christopher M. Joralemon, on Tuesday, October 2, 2012. In his message, Mr. Veselka indicates that he is “passing . . . on” a request from “counsel for some of the folks on the Google, Microsoft, Yahoo subpoenas . . . about trying to get an extension of the return date on those” and further notes that “it would be some convenience of getting all three of them at the same time.”

3. Attached hereto as **“Exhibit B”** is a true and correct copy of an email from my colleague, Howard S. Hogan, to Mr. Veselka on Wednesday, October 3, 2012. In his email, Mr.

Hogan confirms receipt of Mr. Veselka's voice message and states that Chevron is "generally amenable to extensions upon reasonable request. If you would like an extension on behalf of any clients of yours that are registered holders of accounts listed in the subpoenas, please let me know which accounts are at issue and the basis for your extension request and I will respond promptly. Should counsel for any other account holders desire an extension, please have them contact me directly."

4. I am informed and believe that Mr. Veselka did not send any response to Mr. Hogan's October 3 email before Defendants' motion to quash Chevron's subpoenas to Google Inc. and Yahoo! Inc. was filed with the United States District Court for the Northern District of California on October 5, 2012.

5. On September 24, 2012, I spoke by telephone with Laura Belanger regarding Chevron's subpoena to Google. During that conversation, Ms. Belanger confirmed that she is the owner of belanger.laura@gmail.com, and I confirmed that the subpoena does not request email content.

6. On September 29, 2012, I spoke by telephone with Joseph Mutti regarding Chevron's subpoena to Google. During that conversation, Mr. Mutti confirmed that he is the owner of josephmutti@gmail.com, and I confirmed that the subpoena does not request email content.

7. On October 4, 2012, I spoke with Mark A. Robertson regarding Chevron's subpoena to Google. During that conversation, Mr. Robertson represented that he is counsel for the owner of john.wotowicz@gmail.com and asked about the date range of Chevron's requests to Google. I confirmed that Chevron would be willing to narrow the date range requested in the subpoena based on his client's representations as to the relevant date range so long as those representations were not in conflict with evidence already in Chevron's possession.

8. Attached hereto as "**Exhibit C**" is a true and correct copy of a letter I received from Mr. Robertson on October 12, 2012, which says, "thank you for your willingness to limit the scope of Chevron's document request to Google related to john.wotowicz@gmail.com." The

letter continues: “As we discussed, Mr. Wotowicz is the only person who has had access to this account and he does not believe the e-mail account has ever been accessed by anyone other than himself. Mr. Wotowicz had contact with Donziger and investigated funding from sometime in July 2009 to sometime in May 2010 and did not deal with Donziger or the investigation of funding outside that time period. Accordingly, you have agreed to limit the document request to Google regarding john.wotowicz@gmail.com to that time period. Mr. Wotowicz consents to the production of documents responsive to Chevron’s document request (B) to the extent that request (B) is limited to July 1, 2009 through May 31, 2010.”

9. Attached hereto as “**Exhibit D**” is a true and correct copy of a letter I sent to Ms. Nguyen, of Google, on October 15, 2012, to “advise [Google] that Chevron has reached agreement with the owner of john.wotowicz@gmail.com.” The letter states that “Chevron is dropping document request (A) for john.wotowicz@gmail.com” and further notes that “the time period covered by document request (B) should be limited to July 1, 2009, through May 31, 2010, for john.wotowicz@gmail.com.”

10. On October 4, 2012, I spoke with Ethan A. Balogh regarding Chevron’s subpoena to Google. During that conversation, Mr. Balogh represented that he is counsel for the owner of briansethparker@gmail.com and asked about the date range of Chevron’s requests to Google. I confirmed that Chevron would be willing to narrow the date range requested in the subpoena based on his client’s representations as to the relevant date range.

11. Attached hereto as “**Exhibit E**” is a true and correct copy of a letter I sent to Mr. Balogh on October 9, 2012, which states that “Chevron’s subpoena seeks information about the briansethparker@gmail.com email account as it was (or is) related to the activities and events at issue in *Chevron Corp. v. Donziger* . . . [a]ccordingly, we are willing to withdraw category (A) of Chevron’s document requests if Mr. Parker confirms in writing that he created this account and maintained exclusive control over [it] from the time that it was created to the present . . . [f]urther . . . the scope of category (B) can be limited to the dates relevant to Mr. Parker’s communications with the defendants and non-party co-conspirators named in the *Chevron Corp.*

v. Donziger case.”

12. Attached hereto as “**Exhibit F**” is a true and correct copy of a letter dated October 3, 2012, from Mr. Hogan to Nathan Cardozo, counsel for several owners of email accounts listed on Chevron’s subpoenas to Google and Yahoo! Inc. In the letter, Mr. Hogan states that “Chevron’s subpoena seeks identifying information for the users of email accounts that have been identified through discovery, and seeks routine information about the dates and times that those email accounts were accessed. As is clear from the face of the subpoenas, they do not seek information about the contents or recipients of particular emails.”

13. Attached hereto as “**Exhibit G**” is a true and correct copy of an email exchange between myself and Edison Camino-Castro, who appears to be the owner of limcas2002@yahoo.com. In Mr. Camino-Castro’s initial October 9, 2012, email, he states that he is “willing and ready to cooperate with you, should you require my information, data, documents and testimony.” In my October 14, 2012, response email, I state that “Chevron’s subpoena to Yahoo only seeks information directly from Yahoo, not from you. The subpoena asks Yahoo to provide us with user account information and IP logs . . . but not the content of any emails sent using those email addresses.”

14. Attached hereto as “**Exhibit H**” is a true and correct copy of a letter Mr. Hogan sent to Mr. Veselka on October 13, 2012, which states that “Chevron’s subpoenas . . . include routine requests for user account information and IP logs . . . [and] do not call for the production of email content or internet searches. Further, Chevron’s document requests apply only to responsive information available as of the date of the request. As a result, the claims raised in your motion to quash are unfounded. We suggest again that you withdraw your motion to quash, given that it is based on an incorrect reading of the subpoena. We remain willing to discuss the specific date ranges that you believe should be applied for each of the email accounts.”

15. Attached hereto as “**Exhibit I**” is a true and correct copy of a letter Mr. Veselka sent to Mr. Hogan on October 17, 2012, in which Mr. Veselka states that Defendants will not withdraw their motion.

16. On October 30, 2012, Mr. Hogan and I spoke by telephone with Marcia Hofmann and Nathan Cardozo, counsel for several owners of email accounts listed on Chevron's subpoenas to Google and Yahoo! Inc. During that conversation, Ms. Hofmann and Mr. Cardozo represented that they had become counsel for John Rodgers and Laura Belanger, who had previously represented themselves *pro se*. Mr. Hogan and I confirmed Chevron's willingness to withdraw its request for identity information for any account owner who confirms in writing his or her identity and exclusive control over the account at issue. We also confirmed Chevron's willingness to narrow the timeframe of its request for computer usage and IP log information for any account owner who confirms the timeframe during which he or she was in communication with the Defendants.

17. On October 31, 2012, Mr. Hogan and I spoke by telephone with counsel for the Defendants. During that conversation, Mr. Hogan and I confirmed Chevron's willingness to withdraw its request for identity information for any of the Defendants who confirms in writing that he or she has maintained exclusive control over the account at issue.

18. On November 5, 2012, Mr. Hogan and I again spoke by telephone with Ms. Hofmann and Mr. Cardozo, counsel for John Rodgers and Laura Belanger. Mr. Hogan and I confirmed Chevron's previous offer to withdraw its request for identity information for the accounts held by Mr. Rodgers and Ms. Belanger. We also confirmed Chevron's willingness to narrow the timeframe of its request for computer usage and IP log information with respect to Mr. Rodgers and Ms. Belanger's email accounts in light of the sworn statements filed by Mr. Rodgers and Ms. Belanger in connection with prior motions to quash regarding the time frame of their work with the Defendants, subject to minor correction.

19. Chevron formally withdrew the request contained in its subpoena to Google for information concerning the email address kevinjonheller@gmail.com. Attached hereto as "**Exhibit J**" is a true and correct copy of a letter I sent to Chi Nguyen, of Google, on September 28, 2012, stating that "Chevron is dropping its request for information regarding the address kevinjonheller@gmail.com. There is no further need to gather or preserve such information."

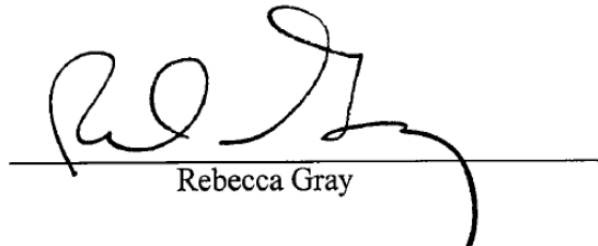
20. Chevron formally withdrew the request contained in its subpoena to Microsoft for information concerning the email address faisal_baki@hotmail.com. Attached hereto as **“Exhibit K”** is a true and correct copy of a letter I sent to Brien Jacobsen, of Microsoft, on September 28, 2012, stating that “Chevron is dropping its request for information regarding the address faisal_baki@hotmail.com. There is no further need to gather or preserve such information.”

21. Attached hereto as **“Exhibit L”** is a true and correct copy of a letter from Mr. Hogan to Ms. Hoffman on October 12, 2012. In the letter, Mr. Hogan confirms that “Chevron’s subpoena does not call for the production of email content” and describes specific ways in which Chevron is willing to narrow the scope of its requests.

22. Attached hereto as **“Exhibit M”** is a true and correct copy of a letter from Mr. Cardozo to Mr. Hogan and myself on October 17, 2012. In the letter, Mr. Cardozo states that “We have conferred with our clients regarding your offer to narrow the scope of the subpoenas None has agreed.”

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 15 day of January, 2013, in Olney, MD.



Rebecca Gray

EXHIBIT A

Voice Message

Date: Tuesday, October 2, 2012
Time: 6:35 PM
From: (713) 221-2300
To: Christopher Joralemon

Chris, Larry Veselka.

We've been contacted by counsel for some of the folks on the Google, Microsoft, Yahoo subpoenas and asked about the ability of the dealings with y'all about trying to get an extension of the return date on those. So, I'm calling you about that. What they have said is they had wanted to see if we could get a return date of the 22nd, it would make, it would be some convenience of getting all three of them at the same time. So, I'm passing that on. Give me a call if you can. I would ask in that sense to have it where you would do it for everybody's return date so that it applies to everybody, for us as well as them, and our—Werdegar, if they're doing anything, which I'll find out.

Also would like to know where you are on the privilege logs and the number of depositions, so, if you get a chance, give me a call. Oh, I think you may have said you're going to be out on depositions, today, weren't you?

So I've left you the message, call me when you can. Bye.

EXHIBIT B

Gray, Rebecca

From: Hogan, Howard S.
Sent: Wednesday, October 03, 2012 4:44 PM
To: lveselka@skv.com
Cc: Joralemon, Christopher M.; Gray, Rebecca
Subject: Chevron v. Donziger, et al., No. 11-civ-0691 (S.D.N.Y.)

I write in response to your voicemail to Chris Joralemon of last night regarding the subpoenas Chevron served on Google, Yahoo and Microsoft regarding email account information. We are in communication with a number of account holders already, and are generally amenable to extensions upon reasonable request. If you would like an extension on behalf of any clients of yours that are registered holders of accounts listed in the subpoenas, please let me know which accounts are at issue and the basis for your extension request and I will respond promptly. Should counsel for any other account holders desire an extension, please have them contact me directly.

Howard S. Hogan

GIBSON DUNN

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EXHIBIT C



Mark A. Robertson
Partner

666 Fifth Avenue, 31st Floor • New York, New York 10103-3198
mrobertson@fulbright.com • Direct: 212 318 3304 • Main: 212 318 3000 • Facsimile: 212 318 3400

October 12, 2012

VIA E-MAIL: RGray@gibsondunn.com

Rebecca Gray, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Re: Chevron v. Donziger: Google Subpoena related to john.wotowicz@gmail.com

Dear Rebecca:

Thank you for speaking with me and thank you for your willingness to limit the scope of Chevron's document request to Google related to john.wotowicz@gmail.com.

We represent John Wotowicz related to the inclusion of john.wotowicz@gmail.com in Chevron's subpoena to Google. As we discussed, Mr. Wotowicz is the only person who has had access to this account and he does not believe the e-mail account has ever been accessed by anyone other than himself.

Mr. Wotowicz had contact with Donziger and investigated funding from sometime in July 2009 to sometime in May 2010 and did not deal with Donziger or the investigation of funding outside that time period. Accordingly, you have agreed to limit the document request to Google regarding john.wotowicz@gmail.com to that time period. Mr. Wotowicz consents to the production of documents responsive to Chevron's document request (B) to the extent that request (B) is limited to July 1, 2009 through May 31, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Robertson".

Mark A. Robertson

MAR/pc

EXHIBIT D

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.

Washington, DC 20036-5306

Tel 202.955.8500

www.gibsondunn.com

Rebecca Gray

Direct: 202.887.3616

rgray@gibsondunn.com

October 15, 2012

VIA ELECTRONIC MAIL

Chi Nguyen
Google, Inc.
1600 Ampitheatre Parkway
Mountain View, CA 94043

Re: Subpoena in *Chevron Corp. v. Donziger, et al.*, Case No. 11 Civ. 0691 (S.D.N.Y.)

Dear Ms. Nguyen:

I write to advise you that Chevron has reached agreement with the owner of john.wotowicz@gmail.com regarding the above-referenced subpoena. As a result, Chevron is modifying its request for information regarding that specific address.

Please note that Chevron is dropping document request (A) for john.wotowicz@gmail.com. Please also note that the time period covered by document request (B) should be limited to July 1, 2009, through May 31, 2010, for john.wotowicz@gmail.com.

I enclose a letter from counsel confirming that the owner of john.wotowicz@gmail.com has consented to the production of documents responsive to the subpoena as modified by this letter.

Should you have any questions, please contact me at 202.887.3616 or rgray@gibsondunn.com.

Sincerely,

Rebecca Gray

Enclosure

EXHIBIT E

GIBSON DUNN

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Tel 202.955.8500
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Rebecca Gray
Direct: 202.887.3616
rgray@gibsondunn.com

October 9, 2012

VIA ELECTRONIC MAIL

Ethan A. Balogh, Esq.
Coleman & Balogh LLP
774 Montgomery Street, Fifth Floor
San Francisco, CA 94111
eab@colemanbalogh.com

Re: Subpoena to Google in *Chevron Corp. v. Donziger*, No. 11 civ. 0691 (S.D.N.Y.)

Dear Ethan:

As we discussed on the telephone, Chevron's subpoena seeks information about the briansethparker@gmail.com email account as it was (or is) related to the activities and events at issue in *Chevron Corp. v. Donziger*, No. 11 civ. 0691 (S.D.N.Y.). Accordingly, we are willing to withdraw category (A) of Chevron's document requests if Mr. Parker confirms in writing that he created this account and maintained exclusive control over the account in question from the time that it was created to the present (*i.e.*, that he did not provide the account credentials to anyone else for their use).

Further, as we discussed, the scope of category (B) can be limited to the dates relevant to Mr. Parker's communications with the defendants and non-party co-conspirators named in the *Chevron Corp. v. Donziger* case. Our understanding of Mr. Parker's prior testimony is that he worked with the defendants and non-party co-conspirators from February 1, 2009, through November 30, 2010. If Mr. Parker is able to confirm in writing that he is not currently working with the defendants or non-party co-conspirators, and that February 1, 2009, through November 30, 2010, is the only range of dates in which he used briansethparker@gmail.com to communicate with the defendants and non-party co-conspirators, then we are willing to limit the scope of the subpoena to those dates. If Mr. Parker cannot make such a representation, then we will be happy to discuss what additional date ranges should be included in the subpoena, or whether there are other adjustments to the scope of the subpoena that are appropriate.

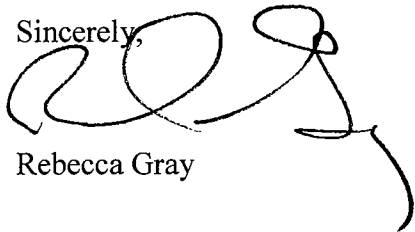
Once we reach an understanding regarding scope, we will notify Google and Mr. Parker will need to indicate his agreement to the modified terms of the subpoena by completing Google's consent procedure through his account.

GIBSON DUNN

Ethan A. Balogh, Esq.
October 9, 2012
Page 2

We appreciate your willingness to meet and confer about this subpoena. Please feel free to call if you would like to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca Gray', with a stylized, looping flourish extending from the end.

Rebecca Gray

101382597.1

EXHIBIT F

GIBSON DUNN

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Direct: +1 202.887.3640
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HHogan@gibsondunn.com

Client: 19624-00020

October 3, 2012

VIA E-MAIL

Nathan Cardozo
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: Chevron's Subpoenas to Google, Yahoo, and Microsoft in *Chevron v. Donziger, et al.*, No. 11-civ-0691 (S.D.N.Y.)

Dear Mr. Cardozo:

I write in response to your letter of October 2, 2012 to my colleague, Rebecca Gray. We appreciate your attempt to provide a written summary of your position, but a number of issues require clarification.

Based on the statements in your letter, you may not be aware that the matter underlying this subpoena is a RICO case involving a \$19 billion conspiracy to extort Chevron using a fraudulently obtained court judgment in Ecuador. Evidence Chevron already has obtained from the plaintiffs' attorneys and consultants involved in the fraud, including email and other electronic documents, has established that the conspirators used multiple alias email accounts and the email accounts of affiliates and proxies to help them carry out and conceal their fraud. Chevron's Amended Complaint in the underlying action details just some of the evidence that was available as of the time of filing as to defendants' repeated instances of ghostwriting and other frauds facilitated by the use of email.¹ Other evidence that we have obtained through discovery (including evidence unearthed since the Amended Complaint was filed) indicates that secret email accounts have also been used to facilitate this fraud, and discovery into this activity continues.

Chevron's subpoena seeks identifying information for the users of email accounts that have been identified through discovery, and seeks routine information about the dates and times that those email accounts were accessed. As is clear from the face of the subpoenas, they do not seek information about the contents or recipients of particular emails. Obtaining basic identifying information and internet access information about email accounts that are associated with the RICO defendants' fraudulent scheme is reasonably calculated to assist

¹ A copy of the Amended Complaint is available at <<http://chevronecuadortrial.com/>>. You can also watch a summary of video evidence of the fraud at <<http://www.youtube.com/texacoecuador>>.

GIBSON DUNN

Nathan Cardozo
October 3, 2012
Page 2

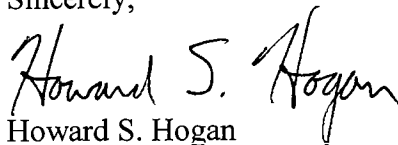
Chevron in determining what additional discovery is required from the RICO defendants or third parties.

Moreover, as Ms. Gray has made clear, Chevron is willing to discuss reasonable limitations to those requests that affect your clients. Indeed, we have already extended the response deadline for each account you have identified as belonging to your clients to allow us to work with you to address any concerns about scope. We also have already concluded successful negotiations with other account holders and their counsel regarding the scope of the subpoenas as to their specific email addresses. And we continue to engage in productive discussions with the owners of other accounts. To the extent the Electronic Frontier Foundation (EFF) has an attorney-client relationship with additional account holders, we would be happy to discuss with you in good faith the scope and timing of the response to the subpoena with respect to those accounts. You have to date refused to identify all the email accounts that you claim to represent, and Chevron cannot engage in negotiations with you regarding discovery related to parties you are not authorized to represent, including those who we know have affirmatively chosen other counsel.

With regard to timing, Chevron provided the account owners with more than sufficient time to assert their rights with respect to these subpoenas—our initial response date provided approximately four weeks for notification and response (far longer than the customary two weeks). While we are willing to accommodate reasonable extensions, Chevron's ability to do so is limited by upcoming discovery deadlines in the RICO case. The deadline for service of new party discovery in the underlying action is December 1, 2012, and the information we expect to obtain from this subpoena is likely to require follow up discovery and implicate that deadline.

Accordingly, I reiterate Ms. Gray's request that you please identify all email accounts for which the owners have specifically authorized you to represent them. Regarding the six accounts that you have identified as held by your clients, and for which Chevron has extended the response deadline to October 22, we will be in touch shortly regarding the basis for our subpoenas and possible limitations.

Sincerely,


Howard S. Hogan

HSH/ppm
101378798.1

EXHIBIT G

Gray, Rebecca

From: Gray, Rebecca
Sent: Sunday, October 14, 2012 2:44 PM
To: 'Edison CAMINO-CASTRO'
Cc: Hogan, Howard S.; 'john.hays@haysowens.com'
Subject: RE: Subpoena Edison Camino

Dear Mr. Castro,

Chevron's subpoena to Yahoo only seeks information directly from Yahoo, not from you. The subpoena asks Yahoo to provide us with user account information and IP logs for the specific email addresses listed, but not the content of any emails sent using those email addresses. If you have no objection to Yahoo producing this limited information for limcas2002@yahoo.com, then all you need to do is let Yahoo know by responding to the email notice that you received from Yahoo and stating that you do not object to production of the requested information. Please confirm that is what you are doing, either by including RGray@gibsondunn.com on your email to Yahoo, or by forwarding your e-mail to Yahoo directly to me. Thank you for your willingness to cooperate.

Sincerely,

Rebecca

Rebecca Gray

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3616 • Fax +1 202.530.9644
RGray@gibsondunn.com • www.gibsondunn.com

From: Edison CAMINO-CASTRO [<mailto:limcas2002@yahoo.com>]
Sent: Tuesday, October 09, 2012 1:59 PM
To: Gray, Rebecca
Cc: Southwell, Alexander H.
Subject: Subpoena Edison Camino

Dear Mrs. Rebecca Gray:

You have requested my YAHOO information through a California Court. Mr. Alexander H. Southwell requested last year the same information (September 13, 2011).

I am willing and ready to cooperate with you, should you require my information, data, documents and testimony.

I do not know and have no experience in the judicial systems and laws of USA. I am Ecuadorian citizen, living and working in Ecuador. I have knowledge and experience in the judicial systems and laws of Ecuador.

To make contact with you and discuss the delivery of information, data, documents and testimony, it is going to be necessary to hire an attorney who is currently working in Quito.

May I recommend a lawyer for you to start your business contacts, he knows me since I have been involved in the environmental lawsuit, as Perito (witness expert). Here is his name and address:

Dr. Adolfo Callejas Ribadeneira. Ecuadorian lawyer based in Quito. Currently local lawyer for Chevron in the environmental lawsuit.

His address: Rumipamba Ave. 706. Quito. Telephone: 5932 2268221; 5932 2268222; 5932 2268086.

Best regards,

Edison CAMINO-CASTRO

593 999684349

EXHIBIT H

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Howard S. Hogan
Direct: +1 202.887.3640
Fax: +1 202.530.9550
HHogan@gibsondunn.com

October 13, 2012

VIA ELECTRONIC MAIL

Larry R. Veselka, Esq.
Smyser Kaplan & Veselka, LLP
Bank of America Center
700 Louisiana, Suite 2300
Houston, Texas 77002

Re: Subpoenas to Google and Yahoo! in *Chevron Corp. v. Donziger*
No. 11-civ-0691 (S.D.N.Y.)

Dear Larry:

This letter follows up on our recent discussions. On October 3, 2012, I sent you an email letting you know that Chevron was amenable to extending the deadline for response to the subpoenas served on Google and Yahoo! in order to try to narrow the scope of the information requested with respect to account users that you represent.

Because you did not respond to that email, we were surprised to learn that you filed a motion to quash on Friday, October 5, 2012.

As I said in my October 9 voicemail, and again when we spoke earlier this week, your motion is based on a flawed reading of Chevron's subpoenas. Chevron's subpoenas seek information from the email service providers regarding specific email accounts connected with the activities and events at issue in *Chevron Corp. v. Donziger*, No. 11-civ-0691 (S.D.N.Y.). These subpoenas include routine requests for user account information and IP logs. The subpoenas, moreover, do not call for the production of email content or internet searches. Further, Chevron's document requests apply only to responsive information available as of the date of the request. As a result, the claims raised in your motion to quash are unfounded.

We suggest again that you withdraw your motion to quash, given that it is based on an incorrect reading of the subpoena. We remain willing to discuss the specific date ranges that you believe should be applied for each of the email accounts. Please let me know whether you are willing to withdraw the currently pending motion by no later than 5:00 p.m. Eastern on Wednesday, October 17.

GIBSON DUNN

Larry R. Veselka, Esq.
October 13, 2012
Page 2

Sincerely,



Howard S. Hogan

HSH/rg

EXHIBIT I

SMYSER KAPLAN & VESELKA, L.L.P.

BANK OF AMERICA CENTER
700 LOUISIANA SUITE 2300 HOUSTON, TEXAS 77002
TELEPHONE 713.221.2300 FACSIMILE 713.221.2320

Direct Dial Number:
(713) 221-2325

Author's E-mail Address:
lveselka@skv.com

October 17, 2012

Howard S. Hogan
GIBSON, DUNN, CRUTCHER, LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Re: *Subpoenas to Google and Yahoo and Microsoft In Chevron Corp. v. Donziger*
No. 11-civ-0691 (S.D.N.Y)

Dear Mr. Hogan:

Your letter of October 13, 2012 regarding our recent discussions about the above-referenced subpoenas contains numerous statements with which I disagree. I discuss below only those issues necessary to attempt to resolve the matter cooperatively.

This matter began with Chevron's issuance and service of the subject Google and Yahoo subpoenas on September 7, 2012 and of the subject Microsoft subpoena on September 10, 2012, without complying with the prior notice to all parties required by Federal Rule of Civil Procedure 45. When we pointed that out to Chevron by letter dated September 17, 2012, Chevron's counsel compounded the violation of the prior notice requirement by re-serving the same subpoenas on September 19, 2012, the same date that Chevron's counsel dismissively notified Defendants of that action. *See* Randy Mastro letter of September 18, 2012 attached. Re-serving these subpoenas on the same date as the "notice" likely does not even comply with the letter of the rule, but it certainly violates the spirit and intent of the Rule to allow Defendants time to seek Court intervention before service. Indeed, the subpoenas, although served that day, some 9-12 days later than the original service dates, called for responses and production on the original return dates – October 5 for the Google and Yahoo subpoenas and October 8 for the Microsoft subpoenas – a mere 16 to 19 days from the new service date.

Notwithstanding that history, Defendants did not reply to Mr. Mastro's letter so cavalierly dismissing failure to comply with Rule 45. Instead, we attempted to resolve the matter by professional cooperation. I called the Chevron counsel designated as the point man for conferring about discovery matters and left a voicemail on October 2, 2012 requesting that Chevron extend the return dates on the subpoenas until October 22, 2012 for all account holders whose information Chevron was seeking from the Internet Service Providers.

Howard S. Hogan
GIBSON, DUNN, CRUTCHER, LLP
October 17, 2012
Page 2

You responded by voicemail and email on October 3, 2012. Your email did not agree to extend the date for all account holders. Instead, you offered (two days before the return date for the Google and Yahoo subpoenas) only to consider an extension for “any clients of yours that are registered holders” and requested that I identify the accounts and the “basis for your extension request....”

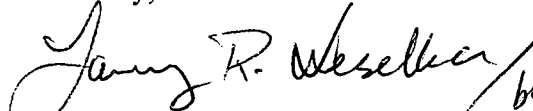

In light of that exchange, you should not have been surprised when we filed our motion to quash on the return date of October 5, 2012, as you purport to have been in your letter of October 13, 2012. Your letter also claims that your October 3, 2012 email addressed your potential willingness “to try to narrow the scope of the information requested.” Your email included no reference to narrowing the scope, only potential extension of the return date for identified account holders.

Having forced us to file the motion to quash on October 5, 2012, Chevron then later that same day unilaterally extended the return dates to October 22, 2012, as I had requested initially.

You then contacted me to discuss our motion to quash. We discussed the matter on October 10. We explained how we thought that the definitions used and the description of the data requested went beyond the material permissible under federal law. We also questioned how Chevron felt it relevant to this case to seek data after February 14, 2011, the date of the Ecuadorian judgment, since Chevron was objecting to producing documents to the Donziger Defendants after that date as irrelevant. In our conversation, we asked you to propose in writing limitations to (a) the definitions and descriptions of the data being sought and (b) time frame covered for us to see if we could resolve the motion. I understood that you said that you would consider doing so. Your letter of October 13, 2012 does neither. It merely regurgitates your earlier denial and does not attempt to clarify, much less limit, the overly broad and improperly defined subpoena.

We would still like to resolve the matter without involving the Court if you will propose language limiting the scope and time frame of the data requested. Otherwise, we respectfully decline your request that we withdraw the motion.

Sincerely,


Larry R. Veselka *by permission* 

cc: Chris Joralemon
Matthew Werdegarr

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Randy M. Mastro
Direct: 212.351.3825
Fax: 212.351.5219
RMastro@gibsondunn.com

Client: T 19624-00020

September 18, 2012

VIA EMAIL

Craig Smyser
Smyser Kaplan & Veselka, LLP
700 Louisiana, Suite 2300
Houston, TX 77002

Re: *Chevron Corp. v. Donziger, et al.*, Case No. 11 Civ. 0691 (LAK)

Dear Mr. Smyser:

I write as counsel for Chevron Corporation ("Chevron") in response to your letter of yesterday regarding service of third-party document subpoenas. Your complaints are either unfounded, inconsequential, or both.

Your complaint about lack of notice concerning the subpoena to Andrew Woods is simply wrong. Prior to its service on the witness, all counsel of record were provided prior notice by email (attaching a copy of the subpoena) from my colleague, Anne Champion, sent at 1:57 PM EDT on Friday, September 14. We also contacted counsel for Mr. Woods at Keker & Van Nest that same day prior to service to ask whether they wanted to accept service of the subpoena before sending a process server. We understand from the process server that the subpoena was served on Saturday, September 15. Because all or the vast majority of the potentially responsive documents to that subpoena should have already been collected and reviewed in response to Chevron's subpoena to Mr. Woods from the Count 9 action, the two-week return date should be more than sufficient, but that is an issue to be addressed, if necessary, with Mr. Woods' counsel, not you.

Your complaint about lack of notice concerning the subpoenas to email service providers Google, Yahoo, and Microsoft is of no consequence. You received notice by email (attaching copies of the subpoenas) from my colleague, Rebecca Gray, yesterday morning at 7:13 AM EDT. And as you are undoubtedly now aware, the return dates on those document subpoenas are far out, October 5, 2012 for both Google and Yahoo, and October 8 for Microsoft. While we do not believe defendants have been prejudiced in any way from proceeding in this manner, in an abundance of caution, and to eliminate any issue whatsoever, we are immediately re-serving these subpoenas on the email service providers, Microsoft, Google, and Yahoo, and advising them by letter that we are amenable to affording them more time to respond to the re-served subpoenas if they need it.

It is obvious from your latest letter that you intend to continue your "obstruct and delay" tactics and to interpose any objection, no matter how meritless or frivolous, to try to block Chevron's discovery efforts here. This much is also evident from your demand that Chevron afford you 10

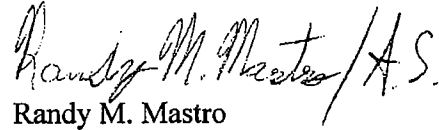
GIBSON DUNN

September 17, 2012

Page 2

days' prior notice of subpoenas, which is nowhere required under any federal rule. We do not believe that Rule 45 requires any special protocol or timing for the provision of notice of a third-party subpoena. Rule 45 simply requires that notice of a document subpoena be provided to the parties "before it is served." Fed. R. Civ. P. 45(b)(1). Defendants have now received such notice for all of these subpoenas served by Chevron to date.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy M. Mastro / A.S.", written over the typed name.

Randy M. Mastro

cc: All Counsel of Record

EXHIBIT J

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Rebecca Gray
Direct: +1 202.887.3616
Fax: +1 202.530.9644
RGray@gibsondunn.com

September 28, 2012

VIA ELECTRONIC MAIL

Chi Nguyen
Google, Inc.
1600 Ampitheatre Parkway
Mountain View, CA 94043

Re: Subpoena in *Chevron Corp. v. Donziger, et al.*, Case No. 11 Civ. 0691 (S.D.N.Y.)
Google Internal Reference No. 257121

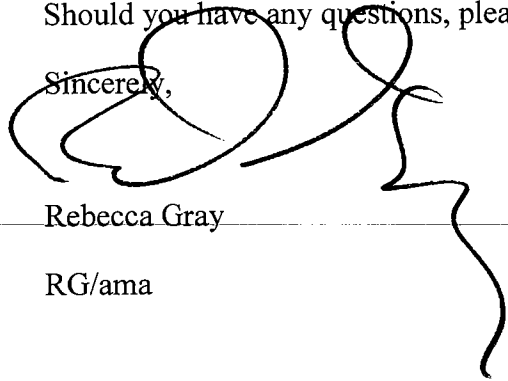
Dear Madam:

I write as counsel for Chevron Corporation ("Chevron"), regarding the subpoena that Chevron served on Google, Inc., on September 19, 2012, in the above-referenced action.

Please note that Chevron is dropping its request for information regarding the address kevinjonheller@gmail.com. There is no further need to gather or preserve such information.

Should you have any questions, please contact me at 202.887.3616 or rgray@gibsondunn.com.

Sincerely,



Rebecca Gray

RG/ama

101376331.1

EXHIBIT K

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.

Washington, DC 20036-5306

Tel 202.955.8500

www.gibsondunn.com

Rebecca Gray

Direct: +1 202.887.3616

Fax: +1 202.530.9644

RGray@gibsondunn.com

September 28, 2012

VIA ELECTRONIC MAIL

Brien Jacobsen
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
brienj@microsoft.com

Re: Subpoena in *Chevron Corp. v. Donziger, et al.*, Case No. 11 Civ. 0691 (S.D.N.Y.)

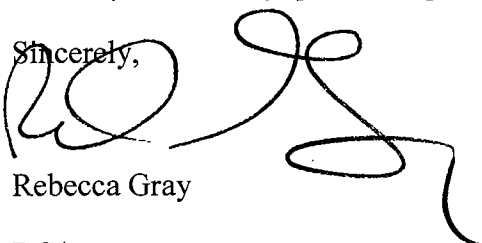
Dear Mr. Jacobsen:

I write as counsel for Chevron Corporation ("Chevron"), regarding the subpoena that Chevron served on Google, Inc., on September 19, 2012, in the above-referenced action.

Please note that Chevron is dropping its request for information regarding the address faisal_baki@hotmail.com. There is no further need to gather or preserve such information.

Should you have any questions, please contact me at 202.887.3616 or rgray@gibsondunn.com.

Sincerely,



Rebecca Gray

RG/ama

101376350.1

EXHIBIT L

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Howard S. Hogan
Direct: +1 202.887.3640
Fax: +1 202.530.9550
HHogan@gibsondunn.com

October 12, 2012

VIA ELECTRONIC MAIL

Marcia Hofmann, Esq.
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: Subpoenas to Google, Yahoo!, and Microsoft in *Chevron Corp. v. Donziger*,
No. 11-civ-0691 (S.D.N.Y.)

Dear Marcia:

I write to confirm the substance of our conversation Wednesday afternoon regarding the above-referenced subpoenas.

As I mentioned when we spoke, Chevron's subpoenas seek information from the email service providers regarding specific email accounts connected with the activities and events at issue in *Chevron Corp. v. Donziger*, No. 11-civ-0691 (S.D.N.Y.). As we noted, these subpoenas involve standard requests for user account information and IP logs. Chevron's subpoena does not call for the production of email content, and does not call for the production of IP logs or other account access information for any email addresses other than those that are listed on the subpoenas themselves. Further, Chevron's document requests apply only to responsive information available as of the date of the request. As we discussed, Chevron also is willing to narrow even these limited requests if the owners of the accounts in question can provide certain information to us directly.

First, we are willing to withdraw category (A) of Chevron's document requests for any account owner who confirms in writing that he or she (1) created the account at issue and (2) has maintained exclusive control over the account in question from the time that it was created to the present (*i.e.*, that he or she is confident that no one else accessed or otherwise made use of the email account). As you suggested, we would also be willing to withdraw category (A) for specific accounts if the document(s) that would be produced in response to category (A) have previously been produced to us in other contexts.

Second, for those account holders who are not themselves defendants or named non-party co-conspirators in the *Chevron Corp. v. Donziger* case, we would be willing to limit the scope of category (B) of Chevron's document requests to those periods of time during which the

GIBSON DUNN

Marcia Hofmann, Esq.
October 12, 2012
Page 2

account holder was in communication with the defendants and non-party co-conspirators named in the underlying proceeding. If any of your clients are able to confirm in writing that their work for, and communication with, the defendants and non-party co-conspirators was limited to specific date ranges, then we would be willing to limit the scope of the subpoena to those dates so long as that representation is not inconsistent with other evidence that we already have in our possession.

As I told you when we spoke, we have been engaged in active negotiations with counsel for a number of the account owners covered by these subpoenas and have reached, or are currently in the midst of concluding, agreements along these same lines that will allow production to proceed.

You indicated that you would confer with your clients regarding our offer to narrow the scope of the above-referenced subpoenas. In the meantime, please feel free to contact me with any questions or concerns.

Sincerely,



Howard S. Hogan

HSH/rg

EXHIBIT M



ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Promoting Freedom on the Electronic Frontier

October 17, 2012

Howard S. Hogan
Rebecca Gray
1050 Connecticut Ave, N.W.
Washington, DC 20036
HHogan@gibsondunn.com
RGray@gibsondunn.com

VIA EMAIL

Re: Chevron's Subpoenas to Google, Yahoo, and Microsoft in *Chevron v. Donziger, et al.*, No. 11-civ-0691 (S.D.N.Y.)

Dear Howard and Rebecca:

We are in receipt of your letter of October 12, 2012 confirming the substance of our conversation on October 10. Thank you for stating your position in writing to the three providers copied on this letter. We would like to further clarify that you confirmed verbally to us that Chevron does not expect to receive any email header data in response to the above-referenced subpoenas.

We have conferred with our clients regarding your offer to narrow the scope of the subpoenas if our clients confirm certain information in writing. None has agreed. As such, we intend to move to quash all three subpoenas on Monday, October 22, 2012.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan Cardozo'.

Nathan Cardozo

cc: Einat Clarke (eclarke@google.com)
Brien Jacobsen (brienj@microsoft.com)
Christopher Madsen (cmadsen@yahoo-inc.com)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
CHEVRON CORPORATION,
:
:
Plaintiff, :
:
-against- : Case No. 1:12-MC-65 GLS/CFH
:
STEVEN DONZIGER, et al., :
:
Defendants. :
:
-----X

**DECLARATION OF ALEXANDER T. MARX ON BEHALF OF CHEVRON
CORPORATION IN OPPOSITION TO THE RICO DEFENDANTS' MOTION TO
QUASH SUBPOENAS TO MICROSOFT CORPORATION**

I, Alexander T. Marx, declare:

1. I am an attorney duly admitted to the State Bar of New York and an associate at the law firm of Gibson, Dunn & Crutcher LLP, attorneys of record for Chevron Corporation in the above-captioned action. I am over the age of eighteen years and am not a party to this action. I have personal knowledge of the facts set forth in this declaration. Each of the exhibits identified below is a true and correct copy of the respective document as it is maintained in the files of Gibson, Dunn & Crutcher LLP in the normal course of business.

2. Attached hereto as "Exhibit 1" is a true and correct copy of an email dated August 1, 2008 from D. Beltman to P. Fajardo and S. Donziger, with the subject "Plan de Trabajo -- Texpet Cleanup," produced by Stratus and bearing Bates number STRATUS-NATIVE063668.

3. Attached hereto as "Exhibit 2" is a true and correct copy of the subpoena to Microsoft Corporation issued by Chevron Corporation, dated September 10, 2012.

4. Attached hereto as "Exhibit 3" are true and correct copies of three subpoenas on Yahoo! Inc. by Friedman, Kaplan, Seiler & Adelman LLP, counsel for S. Donziger, respectively dated November 29, 2010, December 9, 2010, and January 3, 2011.

5. Attached hereto as "Exhibit 4" is a true and correct copy of a letter from Yahoo! Inc. to Friedman, Kaplan, Seiler & Adelman LLP, counsel for S. Donziger, dated December 7, 2010.

6. Attached hereto as "Exhibit 5" is a true and correct copy of a letter from Yahoo! Inc. to Friedman, Kaplan, Seiler & Adelman LLP, counsel for S. Donziger, dated December 20, 2010.

7. Attached hereto as "Exhibit 6" is a true and correct copy of a letter from Yahoo! Inc. to Friedman, Kaplan, Seiler & Adelman LLP, counsel for S. Donziger, dated January 7, 2011.

8. Attached hereto as "Exhibit 7" is a true and correct copy of a report titled "Yahoo Account Management Tool," associated with the email account "documents2010@ymail.com," and dated January 24, 2011.

9. Attached hereto as "Exhibit 8" is a true and correct copy of a transcript of September 25, 2012 proceedings in *Chevron Corp. v. Donziger*, 11 Civ. 691 LAK (S.D.N.Y.).

10. Attached hereto as "Exhibit 9" is a true and correct copy of Microsoft Corporation's Online Privacy Statement, downloaded from the Internet on January 9, 2013.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 15 day of January, 2013, in Los Angeles, California.



Alexander T. Marx

EXHIBIT 1

From: Doug Beltman <dbeltman@stratus consulting.com>
Sent: Friday, August 1, 2008 4:27 PM
To: Pablo Fajardo Mendoza <pafabibi@gmail.com>; STEVEN DONZIGER <sdonziger@gmail.com>
Subject: Plan de Trabajo -- Texpet cleanup

Pablo y Steven:

Una de nuestras tareas para los comentarios sobre el informe de Cabrera en el Plan de Trabajo es conducir un análisis técnico de si la limpieza de Texpet en los años 90 se conformó con los requisitos técnicos para la limpieza. Cabrera menciona ya que el trabajo de Texpet no limpió realmente las piscinas, y la idea de este análisis era determinar si podríamos criticar más la limpieza de Texpet para no conformarse con los requisitos técnicos. Repasé cuidadosamente los requisitos técnicos para la limpieza en los cuales se especifican:

- El contrato del mayo de 1995 para ejecutar el trabajo y el lanzamiento remediadores de obligaciones, de la responsabilidad, y de demandas
- La Declaración del Trabajo de marzo de 1995 para la limpieza que se añade al contrato
- El Plan de Actuación Remediador (RAP) del agosto de 1995 escrito por un contratista de Texpet y aprobado por ROE.

Comparé los requisitos técnicos contenidos en esos documentos contra la descripción de la remediación y los resultados de la prueba que se describen en el informe 2000 de Woodward Clyde.

Aunque haya algunas ambigüedades de la lengua y de cuestiones legales potenciales (tales como contradicciones evidentes entre la declaración del marzo de 1995 del trabajo y el RAP), no encontré ninguna casos clara donde Texpet no cumplió las condiciones requeridas en la limpieza. La excepción muy grande, por supuesto, es que el muestreo durante las inspecciones judiciales y por Cabrera demostrado que las piscinas "limpiados" de hecho todavía están contaminados- sin embargo, el muestreo hecho por la poste-limpieza de Woodward Clyde demostró las piscinas para estar de acuerdo con los requisitos de contrato. Esta discrepancia importante alocución ya por Cabrera en su informe. Hay también la edición que el RAP está en conflicto con leyes del Ecuatorian, pero otra vez yo no hice evalúa eso aquí.

Por lo tanto, no tengo ninguna comentarios a prepararse en este aspecto del informe de Cabrera.

ENGLISH:

Pablo y Steven:

One of our tasks for the comments on the Cabrera Report in the Plan de Trabajo is to conduct a technical analysis of whether the Texpet cleanup in the 1990s complied with the technical requirements for the cleanup. Cabrera already points out that the Texpet work did not actually clean up the pits, and the idea of this analysis was to determine if we could further criticize the Texpet cleanup for not complying with the technical requirements.

I carefully reviewed the technical requirements for the cleanup that are specified in:

- The May 1995 contract for implementing remedial work and release from obligations, liability, and claims
- The March 1995 Statement of Work for the cleanup that is appended to the contract
- The August 1995 Remedial Action Plan (RAP) written by a Texpet contractor and approved by ROE.

I compared the technical requirements contained in those documents against the description of the remediation and the testing results that are described in the 2000 Woodward Clyde report.

Although there are some ambiguities of language and potential legal issues (such as apparent contradictions between the March 1995 Statement of Work and the RAP), I did not find any clear instances where Texpet did not meet the conditions required in the cleanup. The very large exception, of course, is that sampling during the Judicial Inspections and by Cabrera showed that the "cleaned" pits are in fact still contaminated - however, the sampling done by Woodward Clyde post-cleanup showed the pits to be in compliance with the contract requirements. This important discrepancy has already been addressed by Cabrera in his report. There is also the issue that the RAP conflicts with Ecuadorian laws, but again I didn't evaluate that here.

Therefore, I do not have any comments to prepare on this aspect of the Cabrera report.

=====
Douglas Beltman
Executive Vice President
Stratus Consulting Inc.
303.381.8000
303.381.8200 (fax)
www.stratusconsulting.com

EXHIBIT 2

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of New York

CHEVRON CORP.

Plaintiff

v.

STEVEN DONZIGER, et al.,

Defendant

Civil Action No. 11 Civ. 0691 (LAK)

(If the action is pending in another district, state where:

Southern District of New York)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Microsoft Registered Agent, Corporation Service Company, 80 State Street, Albany, NY 12207

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Place: GIBSON, DUNN & CRUTCHER LLP 200 Park Avenue New York, NY 10166-0193 c/o Alex Marx	Date and Time: 10/08/2012 9:00 am
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 09/10/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Chevron Corporation, who issues or requests this subpoena, are:

Rachel Brook, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193
Telephone: (212)351-2609, rbrook@gibsondunn.com

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 11 Civ. 0691 (LAK)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE A

DEFINITIONS

1. “DOCUMENT” has the full meaning ascribed to it in Rule 34 of the Federal Rules of Civil Procedure and Rule 26.3 of the Local Rules for the United States District Court for the Southern District of New York and shall include all originals of any nature whatsoever and all non-identical copies thereof, whether different from the originals by reason of any notation made on such copies or otherwise, including but not limited to all writings in any form, notes, memoranda, manuals, reports, records, correspondence, drawings, graphs, charts, photographs, phone records, data compilations of whatever nature (including those from which information can be obtained or translated if necessary), audio tapes, electronic mail messages, and electronic data (including any exchange of information between computers, all information stored in an electronic form or computer database, and all forms and formats of storage).

2. “RELATED TO,” “RELATING TO,” “IN RELATION TO,” “REGARDING” and “CONCERNING” means in relation to, related to, consisting of, referring to, reflecting, concerning, discussing, evidencing, commenting on, describing, constituting, supporting, contradicting or having any logical or factual connection with the matter identified, in whole or in part.

INSTRUCTIONS

1. These requests are governed by Rules 26 and 45 of the Federal Rules of Civil Procedure and any applicable law and Local Rule.

2. You are requested to produce all DOCUMENTS and things described below at Gibson, Dunn & Crutcher, LLP, c/o Alex Marx, 200 Park Avenue, New York, NY 10166-0193, on or before October 8, 2012.

3. In answering and responding to these document requests, you are requested to produce all DOCUMENTS that are in your possession, custody, or control, or that are in the possession, custody, or control of your principals, agents, employees, attorneys, representatives, insurers, and any other persons or entities, acting on your behalf.

4. If any of the information or DOCUMENTS supplied in response to these document requests does not come from your records, please specify the source of the DOCUMENTS.

5. If you refuse to produce any requested DOCUMENT under a claim of attorney-client privilege, work product privilege, or any other privilege or protection, it is requested that you submit for each DOCUMENT withheld a written statement that: specifies the privilege or other asserted basis for withholding the DOCUMENT; summarizes the substance of the DOCUMENT; identifies the person or entity who prepared the DOCUMENT and any persons or entities to which the DOCUMENT was sent or disclosed; and specifies the dates on which the DOCUMENT was prepared, transmitted, or received.

6. The time period covered by these document requests runs from 2003 to the present. This is a continuing request. Any DOCUMENT obtained or located after the date of production that would have been produced had it been available or had its existence been known at that time should be produced immediately.

7. If an objection is made to any numbered request, or any subpart thereof, state with specificity all grounds for the objection.

8. All responsive and potentially responsive documents and tangible things should be preserved and maintained pending the outcome of this matter.

DOCUMENTS REQUESTED

All DOCUMENTS RELATED TO (A) the identity of the user of the following email addresses, including but not limited to DOCUMENTS that provide all names, mailing addresses, phone numbers, billing information, date of account creation, account information and all other identifying information associated with the email address under any and all names, aliases, identities or designations RELATED TO the email address; and (B) the usage of the following email addresses, including but not limited to DOCUMENTS that provide IP logs, IP address information at time of registration and subsequent usage, computer usage logs, or other means of recording information concerning the email or Internet usage of the email address.

1. Examen_pericial@hotmail.com
2. muerteenlaselva@hotmail.com
3. ingracabrerav@hotmail.com
4. rcabrerav@hotmail.com
5. cristobalvillao@hotmail.com
6. luisvillacreces@hotmail.com
7. julprieto@hotmail.com
8. juanpasaenz@hotmail.com
9. gaer69chzpr@hotmail.com
10. donaldmoncayo@hotmail.com
11. alex_anchundia2007@hotmail.com
12. erikatorres_19@hotmail.com
13. gabrielitaep@hotmail.com
14. hannagoanna@hotmail.com

15. duruti@hotmail.com
16. aulestiajuan@hotmail.com
17. maryelji20@hotmail.com
18. mey_1802@hotmail.com
19. monica_pareja@hotmail.com
20. pirancha@hotmail.com
21. nick_aussie@hotmail.com
22. renatog85@hotmail.com
23. selvaviva2004@hotmail.com
24. simeontegel@hotmail.com
25. patriciogarcia_2009@hotmail.com
26. criscadena@hotmail.com
27. albertoguerrab@hotmail.com
28. faisal_baki@hotmail.com
29. Hjploro@hotmail.com
30. osimonc@hotmail.com

EXHIBIT 3

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

In re Application of Chevron Corporation, et al

Plaintiff

v.

Defendant

Civil Action No. 10-MC-0002

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Yahoo! Inc.

(c/o Registered Agent CT Corporation System, 111 Eighth Avenue, New York, New York 10011)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Documents adequate to permit the account holder of "documents2010@gmail.com" to access the e-mail stored in the account. The account password would satisfy this request.

This request is made with the consent of the account holder/subscriber, Steven R. Donziger (the account was created by Mr. Donziger's assistant, Andrew M. Woods, who also consents to this request).

Place: Friedman Kaplan Seiler & Adelman LLP 1633 Broadway, 46th Floor New York, New York 10019	Date and Time: 12/03/2010 9:00 am
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/29/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Steven R. Donziger, who issues or requests this subpoena, are:

Bruce S. Kaplan, Friedman Kaplan Seiler & Adelman LLP, 1633 Broadway, 46th Floor, NY, NY 10019

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re Chevron Corporation

Plaintiff

v.

Defendant

Civil Action No. 10-MC-0002

(If the action is pending in another district, state where:
Southern District of New York)SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Yahoo! Inc.

Custodian of Records, Legal Department, 701 1st Avenue, Sunnyvale, CA 94089

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: The contents, including all e-mail, of the account "documents2010@ymail.com"

This request is made with the consent of the account holder/subscriber, Steven R. Donziger (the account was created by Mr. Donziger's assistant, Andrew M. Woods, who also consents to this request).

Place: Friedman Kaplan Seiler & Adelman LLP 1633 Broadway, 46th Floor New York, NY 10019	Date and Time: 12/16/2010 9:00 am
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/09/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Steven R. Donziger, who issues or requests this subpoena, are:

Bruce S. Kaplan, Friedman Kaplan Seiler & Adelman LLP, 1633 Broadway, 46th Floor, NY, NY 10019

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re Chevron Corporation

Plaintiff

v.

Defendant

Civil Action No. 10-MC-0002

(If the action is pending in another district, state where:
Southern District of New York)SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Yahoo! Inc.

Custodian of Records, Legal Department, 701 1st Avenue, Sunnyvale, CA 94089

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: The documents identified in the attached "Exhibit A."

This request is made with the consent of the account holder/subscriber, Steven R. Donziger (the account was created by Mr. Donziger's assistant, Andrew M. Woods, who also consents to this request).

Place: Friedman Kaplan Seiler & Adelman LLP 1633 Broadway, 46th Floor New York, NY 10019	Date and Time: 01/07/2011 9:00 am
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 01/03/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Steven R. Donziger, who issues or requests this subpoena, are:

Bruce S. Kaplan, Friedman Kaplan Seiler & Adelman LLP, 1633 Broadway, 46th Floor, NY, NY 10019 (FAX: 212-833-1250) (EMAIL: bkaplan@fklaw.com)

EXHIBIT A

1. All documents identifying IP addresses associated with attempts to access the account “documents2010@ymail.com”.
2. All documents providing any information about attempts (whether successful or unsuccessful) to gain access to the account “documents2010@ymail.com”. This would include, but is not limited to, documents identifying the dates and times of such attempts and/or the location (whether by IP address or otherwise) of the attempts.
3. All documents reflecting any information provided to Yahoo! when the account “documents2010@ymail.com” was created. This would include, but is not limited to, documents reflecting any information provided by the user of the account. It would also include documents that reflect the time and date of the account creation, and the location (whether by IP address or otherwise) of the user who created the account.
4. All documents reflecting information about transactional activity associated with the account “documents2010@ymail.com.” This would include, but is not limited to, documents reflecting the time(s) that the account is accessed, and the nature of activity in the account (such as transmission or receipt of e-mails).

EXHIBIT 4



December 7, 2010

Via Facsimile and U.S. Mail

212-373-7901

Bruce Kaplan, Esq.
Friedman Kaplan Seller & Adelman LLP,
1633 Broadway, 46 Floor
New York, NY 10019

Re: ***In re: Application of Chevron Corporation, et al.***
United States District Court, Southern District of New York, case no. 10-MC-
0002
(Internal Reference No. 167122)

Dear Mr. Kaplan:

Yahoo! Inc. ("Yahoo!") is in receipt of a subpoena dated November 29, 2010 issued in the above-referenced matter.

As we understand it, you are seeking data relating to a Yahoo! subscriber. Yahoo! is a resident of California and the vast majority of documents and information regarding its business is retrievable from its headquarters in Sunnyvale, California. Our understanding of Rule 45 of the Federal Rules of Civil Procedure is that a subpoena for production of documents should be issued from the court in the district where the production is to be made. As such, your subpoena should be issued from the U.S. District Court for the Northern District of California.

Subpoenas must be personally served or sent by certified mail or express delivery to Yahoo! at 701 First Avenue, Sunnyvale, California, 94089, to the attention of the Yahoo! Custodian of Records.

Please be advised that Yahoo! does not have access to user passwords. Password information is encrypted for the safety and security of the user account. As such, we are unable to provide user passwords for production in response to your request.

To the extent that the subpoena may be requesting email content for the Yahoo! subscriber identified in the subpoena, please be advised that pursuant to the Stored Communications Act ("SCA"), 18 U.S.C. §2701, *et seq.*, Yahoo! is prohibited from disclosing the contents of electronic communications absent certain exceptions. 18 U.S.C. § 2702(b). As courts have repeatedly recognized, this statute has no exception for civil discovery. *See, e.g., O'Grady v. Superior Court*, 2006 Cal. App. LEXIS 802, *2-3 (Ct. App. Cal. May 26, 2006) (no SCA exception for disclosure of communications pursuant to civil discovery subpoenas); *In re: Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606, 609-612 (E.D. Va. 2008).



The primary exception under which disclosure is permitted is subscriber consent. Accordingly, if you seek to compel lawful disclosure from Yahoo!, we suggest you obtain consent of the subscriber in question. 18 U.S.C. § 2702(b)(3). Upon receipt of your confirmation that the subscriber identified in your request will consent to Yahoo!'s disclosure of the email or other content stored in his account, Yahoo! will provide you with its Consent to Search and Account Verification ("CSAV") form, which requires the subscriber to (1) provide information used by Yahoo! to verify their identity as the account holder; (2) identify the individual(s) to whom Yahoo! should send the requested documents after they have been collected and; (3) define the scope of Yahoo!'s disclosure.

Please note that with regard to email content, Yahoo! only maintains and has access to the contents a user retains in his or her email account.

Additionally, please be advised that upon receipt of a subpoena or other legal process, Yahoo! preserves the requested information and sends notice to the user indicating that the subpoena was issued requesting information regarding their account. It is Yahoo!'s policy that if a user objects to the production of the requested information by filing a Motion to Quash (or other legally proper objection) with the Court, Yahoo! will not produce any responsive documents until the court has ruled on the motion or objection.

At this time, Yahoo! does not have any documents responsive to the subpoena.

By this letter, Yahoo! does not waive any objection to further proceedings in this matter.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christian Lee', with a long, wavy horizontal line extending to the right.

Christian Lee
Legal Assistant
408-349-8511

Enclosure

Consent to Search

I, _____, the account holder of the email address, _____, understand that my email communications are being sought in connection with a subpoena. I hereby grant my consent to authorize the following law firm: _____, to receive, review, copy, and otherwise obtain access to all information of any kind held by Yahoo! relating to my email communications maintained by Yahoo! relating to me or my email address.

In connection with this authority to release information, I do hereby agree to hold harmless and do forever hold harmless Yahoo! for the disclosure of such information and do forever waive on my behalf, and on behalf of my heirs and assigns, any and all claims resulting from Yahoo!'s disclosure of any information relating to my account pursuant to this authorization.

I acknowledge that this Consent to Search is not complete until I send an email from my account, _____, to notice-user@yahoo-inc.com verifying that this account belongs to me.

EXHIBIT 5



December 20, 2010

Via U.S. Mail

Bruce Kaplan, Esq.
Friedman Kaplan Seiler & Adelman LLP
1633 Broadway, 46th Floor
New York, NY 10019

Re: *In re: Chevron Corporation, case no. 10MC0002*
United States District Court, Northern District of California
(Internal Reference No. 168264)

Dear Mr. Kaplan:

Yahoo! Inc. ("Yahoo!") is in receipt of a subpoena dated December 9, 2010 issued in the above-referenced matter.

At this time, Yahoo! does not have any documents responsive to your request.

Please note that with regard to email content, Yahoo! only maintains and has access to the contents a user retains in his or her email account.

By this letter, Yahoo! does not waive any objection to further proceedings in this matter.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Christian Lee". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christian Lee
Legal Assistant
408-349-8511



EXHIBIT 6



January 7, 2011

Via Facsimile and U.S. Mail
212-833-1250

Bruce S. Kaplan, Esq.
Friedman Kaplan Seiler & Adelman LLP
1633 Broadway, 46th Floor
New York, NY 10019-6708

Re: *In re Chevron Corporation*
United States District Court for the Northern District of California (Pending in
Southern District of New York), Case # 10-MC-0002
(Internal Reference No.169381)

Dear Mr. Kaplan:

Yahoo! Inc. ("Yahoo!") is in receipt of a Subpoena dated January 3, 2011 issued in the above-referenced matter.

This letter is to advise you that on January 7, 2011, Yahoo! sent an email notification to the user named in the subpoena indicating that a subpoena dated January 3, 2011 was issued. Yahoo! will wait for a period of 15 days after the email notice was sent before producing responsive documents to the subpoenaing party or will produce on the date specified in the subpoena, whichever is later. If the user objects to the production of the requested information by filing a Motion to Quash (or other legally proper objection) with the Court, Yahoo! will not produce any responsive documents until the court has ruled on the motion or objection. If no objections are lodged, Yahoo! will produce responsive documents on January 24, 2011.

By this letter, Yahoo! does not waive any objection to further proceedings in this matter.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Svetlana Shatnenko", written over the word "Sincerely,".

Svetlana Shatnenko
Paralegal
408-349-1099

EXHIBIT 7

YAHOO! ACCOUNT MANAGEMENT TOOL

Login Name: **documents2010@ymail.com**
GUID: **5H3QSY4HBFIX4NV5D75J7EQNM4**
Yahoo Mail Name: **documents2010@ymail.com**
Registration IP address: **67.243.11.39**
Account Created (reg): **Sun Jan 03 20:38:14 2010 GMT**
Other Identities: **documents2010@ymail.com (Yahoo! Mail)**
Full Name **Mr Not Applicable**
Address1:
Address2:
City:
State, territory or province:
Country: **United States**
Zip/Postal Code: **94583**
Phone:
Time Zone:
Birthday: **[REDACTED]**
Gender: **Male**
Occupation:
Business Name:
Business Address:
Business City:
Business State:
Business Country: **us**
Business Zip:
Business Phone:
Business Email:
Additional IP Addresses: **Sun Jan 03 20:38:14 2010 GMT 67.243.11.39**
Account Status: **Active**

Search for documents2010@ymail.com
 Date Range 07-Jan-2010 00:00:00 / 05-Jan-2011 23:59:59
 Total Results 18

Yahoo ID	IP Address	Login Time
documents2010@ymail.com	67.243.11.39	Tue 15:41:31 (GMT) 27-Apr-2010
documents2010@ymail.com	69.204.232.104	Mon 19:23:10 (GMT) 15-Mar-2010
documents2010@ymail.com	69.204.232.104	Thu 18:11:37 (GMT) 11-Mar-2010
documents2010@ymail.com	69.204.232.104	Mon 15:24:40 (GMT) 08-Mar-2010
documents2010@ymail.com	67.243.11.39	Mon 00:25:05 (GMT) 08-Mar-2010
documents2010@ymail.com	67.243.11.39	Wed 22:13:40 (GMT) 03-Mar-2010
documents2010@ymail.com	69.204.232.104	Thu 18:01:04 (GMT) 04-Feb-2010
documents2010@ymail.com	67.243.11.39	Mon 12:48:09 (GMT) 25-Jan-2010
documents2010@ymail.com	67.243.11.39	Fri 15:38:23 (GMT) 22-Jan-2010
documents2010@ymail.com	69.204.232.104	Thu 21:54:46 (GMT) 21-Jan-2010
documents2010@ymail.com	69.204.232.104	Thu 19:17:30 (GMT) 21-Jan-2010
documents2010@ymail.com	67.243.11.39	Wed 05:31:13 (GMT) 20-Jan-2010
documents2010@ymail.com	69.204.232.104	Sat 21:09:29 (GMT) 16-Jan-2010
documents2010@ymail.com	69.204.232.104	Wed 20:12:13 (GMT) 13-Jan-2010
documents2010@ymail.com	69.204.232.104	Wed 18:30:33 (GMT) 13-Jan-2010
documents2010@ymail.com	69.204.232.104	Wed 18:20:55 (GMT) 13-Jan-2010
documents2010@ymail.com	69.204.232.104	Mon 23:41:20 (GMT) 11-Jan-2010
documents2010@ymail.com	24.129.41.67	Sat 14:03:28 (GMT) 09-Jan-2010

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Yahoo ID	IP Address	Login Time
documents2010@ymail.c	67.243.11.39	Tue 15:41:31 (GMT) 27-Apr-2010
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documents2010@ymail.c	69.204.232.104	Thu 18:01:04 (GMT) 04-Feb-2010
documents2010@ymail.c	67.243.11.39	Mon 12:48:09 (GMT) 25-Jan-2010
documents2010@ymail.c	67.243.11.39	Fri 15:38:23 (GMT) 22-Jan-2010
documents2010@ymail.c	69.204.232.104	Thu 21:54:46 (GMT) 21-Jan-2010
documents2010@ymail.c	69.204.232.104	Thu 19:17:30 (GMT) 21-Jan-2010
documents2010@ymail.c	67.243.11.39	Wed 05:31:13 (GMT) 20-Jan-2010
documents2010@ymail.c	69.204.232.104	Sat 21:09:29 (GMT) 16-Jan-2010
documents2010@ymail.c	69.204.232.104	Wed 20:12:13 (GMT) 13-Jan-2010
documents2010@ymail.c	69.204.232.104	Wed 18:30:33 (GMT) 13-Jan-2010
documents2010@ymail.c	69.204.232.104	Wed 18:20:55 (GMT) 13-Jan-2010
documents2010@ymail.c	69.204.232.104	Mon 23:41:20 (GMT) 11-Jan-2010
documents2010@ymail.c	24.129.41.67	Sat 14:03:28 (GMT) 09-Jan-2010
documents2010@ymail.c	69.204.232.104	Wed 20:05:57 (GMT) 06-Jan-2010
documents2010@ymail.c	67.243.11.39	Wed 18:48:43 (GMT) 06-Jan-2010
documents2010@ymail.c	69.204.232.104	Tue 14:25:47 (GMT) 05-Jan-2010
documents2010@ymail.c	67.243.11.39	Sun 23:48:18 (GMT) 03-Jan-2010

EXHIBIT 8

In The Matter Of:
CHEVRON CORP v
STEVEN DONZIGER, ET AL

September 25, 2012

SOUTHERN DISTRICT REPORTERS
500 PEARL STREET
NEW YORK, NY 10007
212 805-0330

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September 25, 2012

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 CHEVRON CORPORATION,
5 Plaintiff,
6 v. 11 Civ. 691 (LAK)
7 STEVEN DONZIGER, et al.,
8 Defendants.
9 -----x
10 September 25, 2012
11 11:20 a.m.
12 Before:
13 HON. LEWIS A. KAPLAN
14 District Judge
15 APPEARANCES
16 GIBSON DUNN & CRUTCHER
17 Attorneys for Plaintiff
18 BY: RANDY MASTRO
19 LAUREN ELLIOT
20 PETER SELEY
21 ANNE CHAMPION
22 BILL W. THOMSON
23 RICHARD MARK
24
25 GOMEZ LLC
26 Attorneys for Hugo Geraldo Cammacho and
27 Javier Piaguaje
28 BY: JULIO C. GOMEZ
29 - and -
30 SMYSER KAPLAN & VESELKA, LLP
31 BY: GARLAND "Land" D. MURPHY IV
32
33 LEADER & BERKON
34 Attorneys for Non-Party
35 Patton Boggs LLP
36 BY: JAMES K. LEADER

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1 APPEARANCES CONTINUED
2 - also present -
3 PATTON BOGGS LLP
4 Non-Party Respondent
5 BY: ERIC WESTENBERGER
6 EDWARD YENNOCK
7 JONATHAN PECK
8
9 oOo
10 THE CLERK: Chevron against Donziger.
11 Counsel for plaintiff Chevron, are you ready?
12 MR. MASTRO: I'm ready, your Honor.
13 THE CLERK: Counsel for defendants Cammacho and
14 Piaguaje, are you ready?
15 MR. MURPHY: Yes, your Honor. We are ready.
16 MR. GOMEZ: Yes, your Honor.
17 THE CLERK: And counsel for Patton Boggs, are you
18 ready?
19 MR. LEADER: Yes, we are.
20 THE COURT: Mr. Leader, right?
21 MR. LEADER: Yes. Good morning, your Honor.
22 THE COURT: Long time no see.
23 MR. LEADER: Yes, sir.
24 THE COURT: Nice to see you again.
25 MR. LEADER: Thank you, your Honor. Nice to see you
as well.
Could I have just one housekeeping matter before we
start the formal proceeding?

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1 THE COURT: Yes.
2 MR. LEADER: I would like to introduce to the Court
3 the managing partner of Patton Boggs Ed Newberry. Obviously,
4 his law firm has a substantial interest in today's proceedings
5 and he wanted to be here.
6 THE COURT: I gather. He will be more than welcome.
7 MR. LEADER: Thank you.
8 THE COURT: Also on the subject of housekeeping, since
9 this was scheduled, I drew a 34-defendant indictment in which I
10 have to have an initial appearance at 2:30. So we are going to
11 go until the lunch break and then we will resume, depending on
12 what I'm told about whether it is really feasible to go for a
13 half hour or so before that starts, either right after the
14 lunch break and then break again or resume after that
15 conference, which will probably be done by about 3, if we are
16 not done by then.
17 MR. LEADER: Your Honor, I have a religious problem
18 after 2 or 3 o'clock.
19 THE COURT: Well, OK. So we will do the best we can
20 and just continue on another day.
21 MR. LEADER: I would appreciate that, your Honor.
22 THE COURT: All right. Now, before we get started
23 this morning, I think it is useful to put what we are doing in
24 context.
25 I'm not going to dress the general background of the

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1 litigation. Everybody here knows it and, God knows, it has
2 been written about enough. But I do want to make a few points
3 within the narrative.
4 First of all, we are concerned today with a subpoena
5 duces tecum served on Patton Boggs, which has not appeared in
6 this case in this court, but it is involved in litigation
7 between Chevron and the Lago Agrio plaintiffs on behalf of the
8 latter and, in addition, it has been the plaintiff and is the
9 plaintiff in a number of lawsuits against Chevron on its own
10 behalf. I think one of those remains pending, though I am not
11 absolutely certain. In addition, Patton Boggs is named as a
12 co-conspirator in an amended complaint in this case.
13 Secondly, the crux of the dispute over the subpoena is
14 essentially twofold. The first part of it is whether the
15 documents sought are all or substantially all protected from
16 disclosure by attorney-client privilege or the work product
17 doctrine and whether compliance with the subpoena or, for that
18 matter, even production of a privilege log would be unduly
19 burdensome. For reasons already discussed in my
20 August 24th decision, the privilege and work product claims in
21 some respects cannot properly be evaluated without a privilege
22 log.
23 Thirdly, there are substantial disputes, at least in
24 number, as to the proper scope of the subpoena considered
25 without regard to questions of privilege and burden. Patton

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1	Boggs has served 186 pages of objections to the 52		1	might, after any production that ultimately is ordered has been	
2	specifications of the subpoena. It would be most sensible to		2	made, appear in a different light. To the extent that I may	
3	resolve those issues before definitively addressing the		3	modify or limit the scope of or sustain objections to	
4	privilege and, in some respects, the burden claims, as the		4	individual specifications today, those rulings will be without	
5	resolution of the specific objections in the 186 pages could		5	prejudice to the plaintiff later seeking to require broader	
6	well alter the breadth of the material sought, affect the		6	compliance in light of production that's actually made. It	
7	alleged burden, and focus the subpoena on the most important		7	should be clear, however, that I do not intend to order further	
8	matters.		8	production likely, and no such request should be made or likely	
9	With that in mind, I am going to try to deal with the		9	would be granted unless there is a very convincing reason.	
10	objections to the subpoena in this framework.		10	If it is at all possible, we should do this enterprise	
11	First, Patton Boggs has interposed close to 37 pages		11	once -- not more than once.	
12	of general objections and objections to definitions and		12	Finally, I'm commencing this process of attempting to	
13	instructions in the subpoena. With two exceptions, I don't		13	hear argument on the objections to individual specifications in	
14	think oral argument will be helpful to me in ruling on those		14	the hope that it's going to be efficient and helpful. I must	
15	objections. I am going to rule on them shortly. We are not		15	say that given the manner in which the parties -- and I mean	
16	going to deal with them today, except for general objections 8		16	"the parties" -- and the lawyers for the parties -- and I mean	
17	and 9, which address contentions by Patton Boggs that it should		17	"for the parties" -- have behaved thus far in this and related	
18	not be obliged to collect, produce or log documents from		18	litigation, I really have substantial doubt that we're going to	
19	attorneys and professionals working fewer than 50 hours on the		19	get anyplace worth getting by this process. If I come to the	
20	Chevron litigation and, in some respects, from legal		20	conclusion that this is not efficient, or not helpful, I'm	
21	secretaries.		21	going to terminate these arguments, and I'll rule on the	
22	Secondly, there is one respect in which we will		22	objections without oral argument. I do not intend the oral	
23	address burden questions. To the extent there are claims of		23	argument to add to the confusion and waste of time. I hope to	
24	undue burden that are enumerated in the 186 pages and that are		24	cut through it.	
25	unique to individual subpoena specifications, as distinguished		25	With that in mind, let's proceed. And we'll start	
C9pdchem	Conference	Page 6	C9pdchem	Conference	Page 8
1	from a claim that the overall burden of complying with the		1	with general objection 8, which is on page 7 of the Patton	
2	subpoena would be undue, I intend to resolve them.		2	Boggs responses and objections to the subpoena.	
3	Third, it ought to be clear that at least to a very		3	As I understand it, the fundamental dispute here is	
4	substantial degree, and possibly -- well, strike "and		4	that Patton Boggs proposes to collect documents, which, as I	
5	possibly" -- what we are really talking about here is, in the		5	understand it in the present posture, means a log for privilege	
6	first instance, and today, in major part, is how extensive the		6	in the main, only from attorneys and professionals who have	
7	privilege log needs to be and on the basis of how extensive a		7	worked 50 or fewer hours -- or I misstated that slightly -- who	
8	search.		8	have worked less than 50 hours on the Chevron litigation. The	
9	Fourthly, it ought to be plainly understood that I'm		9	plaintiff, as I understand it, doesn't accept that limitation,	
10	approaching this, first and foremost, with Rule 26(b)(2)(C) in		10	at least without a list of who would be excluded by it.	
11	mind. That gives district courts discretion to limit the		11	Is that a fair statement of where you two are?	
12	extent of discovery, even of relevant matters, for several		12	MR. MASTRO: Your Honor, actually, we've agreed to the	
13	reasons. One of them is that its burden or expense outweighs		13	50-hour limit, and we've received a list that we are reviewing.	
14	its likely benefit, considering the needs of the case, the		14	THE COURT: Bless you. We will move on.	
15	amount in controversy, the parties' resources, the importance		15	I take it, Mr. Leader, that is correct; is that right?	
16	of the issues at stake, and the importance of the discovery in		16	MR. LEADER: Yes, your Honor.	
17	resolving the issues.		17	THE COURT: All right.	
18	Unless I otherwise indicate, the rulings that I make		18	MR. MASTRO: Progress already, your Honor.	
19	should be understood as practical judgments about the		19	THE COURT: Well, this is -- I won't say. We'll move	
20	appropriate scope of the subpoena in light of these		20	on to general objection number 9, which has to do with	
21	considerations in the present posture of the case, rather than		21	documents from legal secretaries.	
22	rulings as to relevance as a purely legal matter of the		22	What Patton Boggs' objection is is that it does not	
23	material sought.		23	wish to collect electronic documents of legal secretaries that	
24	Fifth, I understand that the specifications, that at		24	primarily used and relied on Patton Boggs' firm-wide document	
25	the moment might seem to go beyond what seems productive,		25	management computer applications.	

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1	What's the problem, Mr. Mastro?		1	their authority from, and how they have been exercising it.	
2	MR. MASTRO: Your Honor, again, I think we have		2	So we think that the scope of potentially relevant	
3	reached the point of substantial agreement.		3	documents is broader than just a redacted retention agreement.	
4	All we have asked is that they confirm that the		4	So we think they probably have had other exchanges on this very	
5	secretaries on this matter have not maintained documents		5	subject of Mr. Fajardo, Mr. Donziger. It would be interesting	
6	separately in some fashion or data separately from the firm's		6	to see if they had any exchanges with their so-called clients.	
7	server, and as long as we have that confirmation -- and they		7	I think we have a right to get those documents to see if they	
8	have thus been confirming that -- which ultimately they don't		8	even exist and if they've ever even had any communication with	
9	have to serve secretaries.		9	their clients.	
10	THE COURT: Is that agreed, Mr. Leader?		10	So we think it is definitely broader, your Honor, than	
11	MR. LEADER: Yes, your Honor.		11	just a redacted retention agreement.	
12	THE COURT: OK. That takes care of that.		12	THE COURT: Ms. Young.	
13	You see, we're already up to page 37.		13	MS. YOUNG: What Mr. Mastro has just described goes	
14	Document request number 1. Where are we on this?		14	exactly to how Patton Boggs conducts this litigation, what	
15	MS. YOUNG: Your Honor, I can speak to that. Alyssa		15	interactions it has with various parties related to the	
16	Young with Patton Boggs.		16	litigation, and basically how the work is divided up and done.	
17	Patton Boggs has agreed to provide a retainer		17	That goes right to the heart of privileged work product	
18	agreement with its clients redacted of any privileged		18	materials, and, frankly, they have very little to do with this	
19	communications or work product. It was unclear in the		19	case and more to do with trying to invade Patton Boggs' files	
20	meet-and-confer what other documents Chevron is looking for,		20	to understand how its strategy works.	
21	but that is what Patton Boggs has agreed to produce at this		21	MR. MASTRO: Your Honor, may I add one thing?	
22	point.		22	THE COURT: Briefly.	
23	THE COURT: Mr. Mastro, what else do you want? And		23	MR. MASTRO: Yes. This again -- and I think this is	
24	why?		24	going to come up time and time again -- really goes to a	
25	MR. MASTRO: Sure. Your Honor, we believe that the		25	logging issue and whether they should have to collect the	
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1	retention agreement redacted will not cover the entirety of the		1	documents. And if they think that they are privileged, put	
2	scope of the request. We're concerned about the scope of		2	them on a log and we have already, you know, to try to bridge	
3	Patton Boggs' authority to represent or act on behalf of the		3	the gap here, agreed to categorical logging in the fashion that	
4	LAPs. We think it is relevant to the fraud and conspiracy		4	they requested.	
5	claims. We think there are serious questions about whether		5	So, really, the objection here doesn't go to the	
6	Patton Boggs has properly, even acting on behalf of the LAPs,		6	relevance of the information, it goes to whether they are going	
7	are they really acting more on behalf of itself, other law		7	to have a valid privilege claim, and that should be logged and	
8	firms and financiers? And, therefore, we think that it's		8	in a categorical log. And if there are rulings later on	
9	important in that regard to know whether they are properly		9	whether they have a privilege there and whether there is an in	
10	authorized.		10	camera review, the documents will be there for production or	
11	It also goes directly to personal jurisdiction issues		11	for your Honor to review.	
12	and whether agents of the LAPs have been acting on their behalf		12	THE COURT: Suppose, Ms. Young, that this request were	
13	in New York and that Patton Boggs is an appropriate agent.		13	modified on the basis I indicated before, that is to say,	
14	We think this goes to really, you know, the heart of		14	without prejudice, to read all documents discussing,	
15	the RICO conspiracy and the fraud claims, whether persons are		15	conferring, or evidencing your authority; doesn't that solve	
16	acting with or without authority and what they're doing. So we		16	the problem you claim exists?	
17	think it is not just the retention to deal with, your Honor, it		17	MS. YOUNG: Does your Honor mean to exclude work	
18	is also the other exchanges that have occurred about what		18	product and other documents in which Patton Boggs analyzed	
19	they're authorized to do or not authorized to do and by whom.		19	Chevron's allegations that it had acted outside of its	
20	And your Honor will recall that this became an		20	authority?	
21	important issue at an earlier point in time even before the		21	THE COURT: No.	
22	RICO case about whether certain of the lawyers who have been		22	MS. YOUNG: Without that limitation, I believe the	
23	running around the world supposedly acting on behalf of,		23	request would still be impermissibly broad and likely to get at	
24	quote-unquote, indigenous people are really authorized to act		24	documents that are subject to privilege.	
25	on their behalf. We even know those people, where they get		25	THE COURT: Yes. But you understand that I'm not	

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1	passing on privilege questions today. So on that basis I'm		1	drafting. There are -- and subsequent motions about cleansing	
2	going to modify it without prejudice, as I indicated, and then		2	the -- I'm sorry. We know that they made certain choices to	
3	otherwise overrule the objection; that is, I overrule the		3	take things out. We want the documents that reflect their	
4	objection to the request as modified.		4	involvement, how that came about, what choices were made to try	
5	OK. Number 2, which I gather the parties have already		5	and show what wasn't part of the court record, what was part of	
6	agreed in one respect is modified by striking the words "actual		6	the court record, and their knowledge of what was not actually	
7	or potential."		7	submitted on the record but nevertheless must have made it to	
8	MR. MASTRO: Correct, your Honor.		8	the Court anyway.	
9	THE COURT: OK. What is the essence of the dispute?		9	Number two. They are also the party that drafted what	
10	MR. MASTRO: Well, your Honor, we are seeking		10	we call the cleansing memo or motion. That's the one where	
11	documents in which Patton Boggs was involved in the preparation		11	they made application to the Court in mid-2010 to say to the	
12	of briefs, motions, pleadings in connection with the Lago Agrio		12	Court, on the eve of the Stratus documents coming out, Patton	
13	litigation or the Lago Agrio appeal. The relevance of it, your		13	Boggs does the drafting of the submission that was made by the	
14	Honor, we think goes to the heart of the case. Patton Boggs is		14	LAPs in Ecuador to permit them to put in cleansing experts to	
15	a named co-conspirator, and we have argued that, and provided		15	try and paper over and cleanse the Cabrera fraud. So we want	
16	evidence to the Court, that the manner in which the judgment		16	to see their documents on that process, what they knew, what	
17	was procured and the ways in which the judgment was written		17	their colleagues knew, the admissions that they were making.	
18	reflect that it was in fact ghostwritten and there was		18	We do have some documents in this regard, your Honor, but we	
19	involvement on the plaintiff's side, including the plaintiffs'		19	don't have their internal documents, and we don't necessarily	
20	lawyers, in that process. Patton Boggs actually played an		20	have all of the communications. It was by tooth and nail and	
21	integral role in the briefing -- the final briefing, called the		21	only production of the hard drive that we got what we did from	
22	alegato, and differences between that final briefing and the		22	Donziger.	
23	judgment and the changes in the earlier drafts that show up		23	So we don't certainly think we have the full universe	
24	nevertheless in the final judgment, meaning the work product of		24	that tells that story, the story of coming on the case --	
25	the plaintiffs that was never submitted to the Court, that		25	knowing the case was falling apart because the Cabrera fraud	
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1	Patton Boggs edited and knows wasn't submitted to the Court,		1	was about to be revealed, Patton Boggs coming on the case and	
2	nevertheless shows up in the judgment.		2	drafting a critically important document to be submitted to the	
3	Your Honor, we think that their role then in trying to		3	Ecuadorian Court to be able to put in these so-called cleansing	
4	style those briefs what it knew or didn't know in the drafting		4	experts, who turned out to be just derivative of Cabrera to try	
5	process --		5	to paper it over.	
6	THE COURT: I'm sorry. I'm confused. The argument is		6	So for both of those reasons, both in the judgments,	
7	that if you get at their drafts, the drafts may provide		7	ghostwriting fraud, and in the context of this really, you	
8	evidence that there is a remarkable similarity between drafts		8	know, fraud on the process to try and paper over Cabrera as the	
9	that were not filed and portions of the judgment; is that about		9	fraud was unraveling, Patton Boggs was there at the heart of	
10	it?		10	it. And we want to see their documents that reflect their	
11	MR. MASTRO: That's not the entirety of it, but, yes,		11	preparation, their involvement, what they knew, what other	
12	that is a major part of it.		12	people knew, and what they were saying about these things as	
13	THE COURT: That is part of it.		13	they did them.	
14	MR. MASTRO: Their involvement in the drafting -- and		14	THE COURT: What about the appeal?	
15	they were involved in the redrafting of the final brief, the		15	MR. MASTRO: Yes. Well, your Honor, that's important,	
16	final statement of the case that's submitted to the Court, so		16	too, because, you know, we don't have transparency into the	
17	it is referred to as the closing argument, those rewrote that		17	process since the Donziger documents only go up to a point in	
18	brief. The draft contained literally whole sections of		18	early February. We don't have transparency about the	
19	material that Patton Boggs took out of the final product that		19	judgment's aftermath. Yet there have been many questions	
20	was submitted to the Court that nevertheless somehow show up		20	raised about the motions that were submitted. Patton Boggs, we	
21	almost word for word in the judgment.		21	believe, participated in the preparation of them to try and fix	
22	THE COURT: Yeah, I got that. But you tell me you		22	problems in the judgment, anticipating attacks later. They win	
23	know that now.		23	the case --	
24	MR. MASTRO: We know those pieces. These are the		24	THE COURT: My question was what about the appeal?	
25	documents about their involvement in the preparation of		25	Documents relating to submissions --	

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1	MR. MASTRO: And on the appeal, your Honor, questions		1	MR. MASTRO: Your Honor, it emerges starkly in	
2	about the composition of the panel and how the appellate panel		2	May 2010 and really continues thereafter.	
3	went about doing its work, because the trial judge who issues		3	Patton Boggs, under a draft retention agreement that	
4	the judgment is also the judge who basically oversees who was		4	we saw, says they are to be primarily responsible for U.S. and	
5	on the appellate panel. And there are a lot of issues about		5	non-Ecuadorian litigation. Yet, it appears that from May 2010	
6	the continue manipulation and ghostwriting that occurred even		6	on they were integrally involved in the key briefing in	
7	after that, and we need to see -- it will actually be our first		7	Ecuador, the cleansing expert request relating to the final	
8	chance to see the role of the plaintiffs' team in how there		8	alegato and the judgment, and then subsequently, post-judgment	
9	were modifications to the judgment and then how the appellate		9	and on appeal, it appears that they were involved including	
10	process worked and the role they played in helping to craft or		10	even moving for clarification on the fraud issue to try and	
11	cause the crafting of the appellate opinion. We have had no		11	improve their prospects in enforcement later when they had won.	
12	transparency there.		12	Apparently in Ecuador you can make motions when you win to say	
13	THE COURT: Ms. Young or Mr. Leader?		13	I would like even better language in my opinions.	
14	MS. YOUNG: I would like to point out that the request		14	THE COURT: It has been known to happen in America,	
15	is actually directed to all documents related to Patton Boggs'		15	too.	
16	involvement in the preparation of any brief, any motion, any		16	MR. MASTRO: It can't happen quite so transparently,	
17	pleading in connection with the Lago Agrio litigation.		17	your Honor. I don't think that I could move to appeal a	
18	Mr. Master just spoke to two or three examples of		18	complete victory because I wanted some little better language	
19	specific documents that were filed, and, in fact, Patton Boggs		19	in an opinion. But in any event, I'm just saying that it's	
20	requested such a list from them during the meet-and-confer. It		20	really, you know, the beginning of May 2010 on that it appears	
21	is still obvious that we had privilege issues with this		21	Patton Boggs took over in substantial respects briefing and	
22	document request. And, of course, Patton Boggs denies the		22	engineering the strategy, too. The first 1782 was filed in	
23	allegations put forth by Mr. Mastro and --		23	late 2009 in this case.	
24	THE COURT: OK. Look, in the interest of not having		24	THE COURT: Hold on a second while I look something	
25	this repeated every time -- and I don't mean to be unkind -- I		25	up.	
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1	know, as well as you do, that there are privilege issues that		1	(Pause)	
2	I'm not ruling on today, and what we're talking about today is		2	All right. So we are talking here about the time	
3	the scope. So let's just save the time of talking about the		3	period from early 2010 until whatever ultimately the cutoff is.	
4	privilege issues, except to the extent, if we ever get to an		4	Now, you've identified, Mr. Mastro, the alegato.	
5	appropriate point, where we did some appropriate narrowing that		5	You've identified what else specifically?	
6	might in one degree or another reduce or minimize any questions		6	MR. MASTRO: Your Honor, I identified the cleansing	
7	about privilege. OK?		7	motion, to be able to submit cleansing expert reports, which	
8	MS. YOUNG: OK. Understood.		8	was filed in mid-2010. I've identified the alegato, which I	
9	Also, to the extent that Mr. Mastro is asking for		9	believe was filed in December of 2010, and I've identified the	
10	documents that aren't in the court record, he can certainly --		10	post-judgment motion practice, the appellate briefing, and the	
11	he is certainly aware of the court record in Ecuador and		11	post-appellate decision motion practice, all which went to	
12	doesn't need Patton Boggs' documents to show that.		12	trying to manipulate or change the language.	
13	THE COURT: No. But he is not asking you to produce		13	And I would just add one thing, your Honor. This is	
14	documents from the court record in Ecuador. He is asking you		14	going to come up again and again, so I am really trying to cut	
15	to produce documents related to Patton Boggs' involvement in		15	through things. They're going to repeatedly raise we should	
16	the preparation of various documents, which is a separate		16	have provided them a list of what we know --	
17	matter.		17	THE COURT: Let's deal with it if, as, and when we get	
18	MS. YOUNG: Understood. And that goes to virtually		18	it. OK?	
19	everything that Patton Boggs did in the course of the		19	MR. MASTRO: No problem. But they raised it here,	
20	Ecuadorian litigation.		20	too, that we should give them a list. They know which list --	
21	THE COURT: Now, Patton Boggs' involvement dates to		21	THE COURT: OK. Again, without prejudice, as I've	
22	exactly when?		22	indicated -- and I'm going to stop repeating that -- we're	
23	MS. YOUNG: Early 2010.		23	going to modify this, at least temporarily, to documents	
24	THE COURT: Mr. Mastro, when in your submission does		24	relating to Patton Boggs' involvement in the preparation of the	
25	the risk of Cabrera being discredited emerge?		25	alegato, the so-called cleansing motion, as defined by	

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1	Mr. Mastro, and any post-judgment motion or avocation, and		1	MR. MASTRO: Your Honor, here we're seeking documents	
2	otherwise the objection is going to be sustained for the time		2	relating to travel to certain countries where we're already	
3	being.		3	aware, or have reason to believe, might be subjects of	
4	OK. Number 3. Have you reached agreement on this, I		4	enforcement actions. There have already been enforcement	
5	hope?		5	actions filed in Brazil and Canada.	
6	MS. YOUNG: I think the only disagreement remaining on		6	To us, your Honor, this goes to an essential part of	
7	this is whether Patton Boggs can create one travel log, or		7	the conspiracy that Patton Boggs came on to the case to	
8	Chevron has demanded a separate log, signed under penalty of		8	execute. This is the Invictus enforcement strategy. This is	
9	perjury, by each Patton Boggs' attorney who traveled to Ecuador		9	the extortion shakedown pressure strategy. This is -- these	
10	identifying -- and they're asking for a whole host of		10	are the documents that relate to the travel that goes to the	
11	information -- meetings, start and end times, locations,		11	very heart of that. So we think its relevance to the RICO and	
12	attendees, photographs, video recordings.		12	fraud case are evident, and we think we are entitled to get	
13	I think what we offered to do was to put forth a		13	them.	
14	single log identifying Patton Boggs' lawyers who traveled to		14	Patton Boggs objects in its entirety. Some of these	
15	Ecuador in connection with the Chevron litigation, dates of		15	things in the travel records wouldn't be subject to any kind of	
16	travel, and cities or towns visited.		16	privilege claim anyway, but to the extent they have a privilege	
17	THE COURT: Mr. Mastro.		17	claim, they put it on the categorical log. But they've just	
18	MR. MASTRO: I think, your Honor, the only area of		18	object categorically to this, and we think it is clearly	
19	disagreement at this point is what that log would look like.		19	relevant and we are entitled to see it.	
20	We wanted not only arrival and departure dates and the		20	THE COURT: I am going to sustain that objection.	
21	identification of the Patton Boggs' lawyers but who they met		21	Number 5. Ms. Young, these people are asserting	
22	with, who were at these meetings. Were they meeting with a		22	jurisdictional objections in the case of the two who have	
23	judge? Were they meeting with others in Ecuador? And if they		23	appeared. It seems relevant more broadly than that. Why	
24	are able to provide it, the basic durations of the meetings.		24	shouldn't you produce this?	
25	So we think it's a positive step that they will		25	MS. YOUNG: Your Honor, we have asked Chevron to -- we	
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1	identify when they went to Ecuador and who from Patton Boggs		1	have agreed that we will perform a reasonable search for these	
2	went there, but we want to know who they met with and for how		2	documents, and we've suggested ways in which to go about doing	
3	long. It seems to me that that's the key information that we		3	that.	
4	are entitled to as well in trying to determine what they were		4	Searching a set of e-mails, you know, dealing with	
5	doing.		5	other people's travel, it's difficult to come up with a search	
6	THE COURT: What about that, Ms. Young?		6	that would potentially target those documents. I think -- the	
7	MS. YOUNG: I think it's-- Chevron wants to know did		7	example that Chevron has used is if there is an internal	
8	we meet with a judge, did we -- you know, in keeping with their		8	communication at Patton Boggs referring to Pablo Fajardo coming	
9	allegations that we did any improper activity, I think we can		9	to the United States for a meeting, that's what they are	
10	certainly respond to that that we did not.		10	looking for, and we have suggested that we come up with some	
11	THE COURT: I would rather imagine that most parties		11	search terms that might be designed to get at that information.	
12	accused of misconduct are perfectly prepared in discovery to		12	The problem is that Chevron has been unwilling to	
13	say you don't need discovery, we didn't do it, and you should		13	engage in that discussion on what it will accept as a	
14	just accept our word for it. So we're not going down that		14	reasonable search for these types of documents.	
15	course of an approach.		15	THE COURT: These are two separate questions. One	
16	And, furthermore, as I'm sure you know, the crime		16	question is whether the request is appropriate. The second	
17	fraud exception doesn't even require misconduct by the attorney		17	question is, given the respondent's obligation to make a	
18	in order to pierce the privilege, if indeed there is such a		18	reasonable search, what is a reasonable search?	
19	privilege, with respect to anything here.		19	I overrule the objection. Now, the parties are going	
20	And so I'll go along with the one log concept, and the		20	to have to work it out, or if you can't, the Court will decide	
21	log is to contain the identity of each attorney, the arrival		21	what a reasonable search is.	
22	and departure dates of each trip, and with respect to each		22	I understand there are always problems in designing	
23	meeting relating to the case in any way the dates and times and		23	search terms and the like, and in electronic discovery, as in	
24	durations and participants.		24	all other things in life, perfection, desirable as it may be,	
25	OK. Number 4. Mr. Mastro, how do you justify this?		25	is not always achievable.	

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1	OK. Number 6.		1	as a result if they were able to collect on the entirety of	
2	I see that that follows, unless I hear good reason to		2	that judgment for that firm. And it goes to, you know, the	
3	the contrary, the ruling I made with respect to number 4. Any		3	individuals or financiers who were recruited to either join the	
4	reason why not, Mr. Mastro?		4	conspiracy as active participants or, in some cases, including	
5	MR. MASTRO: Your Honor, I think it would be		5	Burford and Joe Kohn, who backed out at some point -- Joe Kohn,	
6	controlled by your ruling on number 4, but when it comes to		6	as we say, with noise. So we think that this really will be	
7	documents relating to the enforcement actions, I would like to		7	highly relevant to the RICO conspiracy and its scope, structure	
8	be heard more on that, as opposed to the travel documents, and		8	and membership.	
9	then we will come to those later requests.		9	THE COURT: Is there any dispute that Patton Boggs has	
10	THE COURT: Then we will deal with it then.		10	a contingent fee arrangement and has a nine-figure benefit to	
11	MR. MASTRO: Thank you, your Honor.		11	be gained if and to the extent the judgment is collected?	
12	THE COURT: Number 7 has been withdrawn by Chevron.		12	MR. MASTRO: There is not, your Honor.	
13	What remains in dispute as to this?		13	THE COURT: You are not in a position to answer that.	
14	MS. YOUNG: Patton Boggs has agreed to produce power		14	MR. MASTRO: Sorry, your Honor.	
15	of attorney documents. I'm not sure what else is at issue.		15	(Pause)	
16	THE COURT: Including drafts?		16	MS. YOUNG: Excuse me, your Honor. I just need to	
17	MS. YOUNG: Drafts would -- we would have the same		17	confer with my client.	
18	problem with work product, but I believe we could log those.		18	THE COURT: I understand.	
19	MR. MASTRO: OK.		19	(Pause)	
20	THE COURT: OK. So the objection is overruled,		20	MR. MASTRO: Your Honor, could I add just one more	
21	except, of course, that identical -- well, what about this?		21	thing while she is conferring?	
22	Let me raise the question.		22	THE COURT: No. Let's do one thing at a time.	
23	Shouldn't this exclude or should it exclude identical		23	MR. MASTRO: No problem, your Honor.	
24	copies of documents that were produced -- actually produced in		24	(Pause)	
25	the 1782 case against Mr. Donziger?		25	MS. YOUNG: Your Honor, Patton Boggs is not	
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1	MS. YOUNG: We don't currently have that production so		1	comfortable with discussing the financial arrangements relating	
2	Chevron would need to identify those for us.		2	to its potential payment from this litigation.	
3	MR. MASTRO: Well, your Honor, we don't have a problem		3	THE COURT: Well, I mean, you may have your choice	
4	with that. So, you know, but it is not clear to us in terms of		4	between getting comfortable with it or producing all the	
5	burden and everything else, you know, should we give them		5	documents about it.	
6	everything in the Donziger production that relates to this		6	MS. YOUNG: We've agreed to produce the retainer	
7	issue? Is that how they --		7	agreement, and I believe it will be redacted of sensitive	
8	THE COURT: This is really, I guess, silly.		8	financial information.	
9	MR. MASTRO: Right. I don't want to --		9	THE COURT: Well, that's your version. I don't see	
10	THE COURT: Because, obviously, I mean, Mr. Donziger		10	any basis for that redaction.	
11	represents these people and you are working -- not you, Leader		11	MS. YOUNG: The --	
12	& Berkon, but you Patton Boggs are working hand and glove with		12	THE COURT: So maybe you can persuade me.	
13	the Keker firm, or at least that's the only logical assumption		13	MS. YOUNG: The funding arrangements as it relates to	
14	to draw, and so I will just overrule the objection. You are		14	Patton Boggs, that has no bearing on the RICO litigation.	
15	perfectly able to find out what was in these things.		15	THE COURT: It has to do with motive, doesn't it?	
16	Number 9.		16	MS. YOUNG: Patton Boggs isn't a defendant in the RICO	
17	(Pause)		17	litigation.	
18	Anybody wish to address it?		18	THE COURT: It is an alleged co-conspirator, isn't it?	
19	MR. MASTRO: Your Honor, again, we think this goes to		19	Right in the complaint.	
20	the heart of the RICO claim because these documents potentially		20	MS. YOUNG: Understood, your Honor.	
21	relate to membership in the conspiracy, its scope, its		21	(Pause)	
22	structure, the motives of individuals and their interests,		22	At a minimum, your Honor, Patton Boggs requests a	
23	including the Patton Boggs firm which recruited certain of the		23	protective order, a confidentiality order so that the	
24	funders, including Burford. The Patton Boggs firm, which has a		24	information relating to its payment or potential payment is not	
25	contingency arrangement that should generate over 400 million		25	disclosed outside of this litigation.	

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1	THE COURT: Any problem with that, Mr. Mastro?		1	Patton Boggs will show why Burford stopped funding. But it did	
2	MR. MASTRO: Your Honor, there has already been		2	provide millions in seed capital at Patton Boggs' behest, based	
3	disclosures with no protective order that give that amount. I		3	on representations like those in Invictus about the so-called	
4	don't have any problem with a protective order, that I won't		4	merit of what they were going to try to do, that, you know,	
5	reveal what they say they'll get out of the litigation.		5	funded the enterprise, kept the scheme going, gave them the	
6	MS. YOUNG: Your Honor, if the plaintiffs already have		6	lifeblood capital they needed. And if those parties -- some of	
7	this information, why does it need to come from Patton Boggs		7	those parties -- I can't say whether that is going to be the	
8	again?		8	case for Burford, but we think we have a good faith basis	
9	THE COURT: Do you know that the United States		9	arising from the discovery, and of others, you know, were	
10	government takes the position that terrorists who have been		10	induced to fund, to keep this thing going, the scheme going,	
11	held in certain foreign countries, as reported by every media		11	and later came to realize they had been hoodwinked. That's	
12	outlet in the world, are in the position where the government		12	third-party fraud. That's extremely relevant to the RICO. So	
13	will not confirm nor deny which foreign countries even though		13	we believe we're entitled to those documents.	
14	everybody in the world knows it? Do you understand that? And		14	THE COURT: Ms. Young.	
15	the reason it doesn't is because they don't want to be bound by		15	MS. YOUNG: I think that's pure speculation as to why	
16	the admission, which is why you don't want to be bound by the		16	somebody stopped providing funding or continued. And, again,	
17	admission. But the admission is relevant in the lawsuit. And		17	the fact of someone funding or not funding, we are OK with	
18	for them to say somebody else said that Patton Boggs' interest		18	disclosing that. You know, the discussions back and forth	
19	is X is different from Patton Boggs saying it or producing the		19	touching on the merits of the case or anything else we think	
20	documents.		20	should be off limits.	
21	Now, let's use this time productively. Is there any		21	THE COURT: Well, why? It is not exactly privileged,	
22	problem with a protective order of the standard garden variety		22	is it, even if there is a privilege?	
23	form that would enable them in the first instance to designate		23	MS. YOUNG: Well, there may be work product revealed	
24	that piece of information as for use in this litigation only		24	in those discussions, yes, about strategy, about planning,	
25	and would not restrict you, Mr. Mastro, as in all other cases,		25	about --	
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1	if you have that information from someplace else, using it?		1	THE COURT: Which may very well blow even the work	
2	MR. MASTRO: And I said, it will be fine with me, your		2	product protection.	
3	Honor.		3	MS. YOUNG: I believe --	
4	THE COURT: OK. So that solves that problem, right,		4	THE COURT: Because you are dealing with an adverse	
5	Ms. Young?		5	party at arms' length.	
6	MS. YOUNG: Understood, your Honor. Yes.		6	MS. YOUNG: Well, I think it is actually the opposite,	
7	THE COURT: OK. Now, what about the limitation to		7	that they have a common interest in the litigation if they're	
8	executed funding agreements?		8	funding it.	
9	MR. MASTRO: Your Honor, the reason why it shouldn't		9	THE COURT: Maybe not if they are pulling out. Maybe	
10	be limited to executed funding agreements is because part of		10	not if they say no. Maybe not until they decide to fund it.	
11	the fraud -- part of the third-party fraud is that		11	MS. YOUNG: It is a collateral issue. It is	
12	misrepresentations by Patton Boggs and others on the		12	speculative. If we're trying to reduce the scope of the	
13	plaintiff's team were made to induce people to fund the		13	subpoena, you know, I don't think there is any meaningful	
14	litigation. In some cases they decided not to, because they		14	information that's going to come out of that inquiry.	
15	concluded not to. In other cases they decided to and later		15	THE COURT: I am going to come back to that one. I	
16	withdrew, apparently because they considered themselves to have		16	will think about that a little more.	
17	been defrauded. So we think we should be able to get documents		17	Number 10.	
18	that go to their efforts to induce funders as well as the		18	MS. YOUNG: 10 is the identical problem. It just	
19	funding agreements themselves.		19	lists names.	
20	THE COURT: And how is that relevant to whether they		20	THE COURT: Is that right?	
21	did what you claim they have done to Chevron?		21	MR. MASTRO: These are all parties we believe that are	
22	MR. MASTRO: Because, your Honor, take a Burford as an		22	related to funding issues. Your Honor, if I may suggest one	
23	example. We believe that since Burford cut off its funding --		23	other thing that might help you resolve 9 and 10?	
24	and of the limited documents we have seen, we have seen that		24	From the documents we have seen, that we have been	
25	they are now in some controversy -- we hope the discovery from		25	able to obtain in discovery, we see the breakdown between the	

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1	plaintiffs and Burford, and we have seen from the plaintiff's		1	THE COURT: And why are you entitled to all documents	
2	side some hostile exchanges with Burford when Burford withdrew		2	relating to him?	
3	its funding. There must be Burford letters to the plaintiffs,		3	MR. MASTRO: He is a person who both participated in	
4	and we believe they will show exactly what we need to prove,		4	helping them arrange funding and also served as a consultant --	
5	third-party fraud and --		5	as we understand it, a consultant to the LAPs on the foreign	
6	THE COURT: Yes. But you haven't persuaded me yet		6	enforcement or Invictus strategy.	
7	that evidence that third-party investors were snookered, if		7	THE COURT: Sustained.	
8	indeed that's the case, is particularly probative of anything		8	MR. MASTRO: Your Honor, may I just ask one more	
9	in this case.		9	question?	
10	MR. MASTRO: But, your Honor, it is critically		10	THE COURT: Yes.	
11	important, because without that money -- without that seed		11	MR. MASTRO: In terms of the limited production on 9	
12	money from Burford, we think the documents will show Patton		12	and 10, I would strongly implore your Honor that if there are	
13	Boggs never would have gotten involved in this case and not		13	exchanges with Burford that would reflect that Burford backed	
14	gotten the seed money, because they had a mixed-fee contingency		14	out of the funding agreement because they felt they were	
15	fee arrangement.		15	defrauded, that that would be highly relevant.	
16	THE COURT: Without the word processor, they couldn't		16	THE COURT: Nobody is stopping you from taking	
17	have gotten involved either and we are not examining IBM.		17	Burford's deposition and let's see where that goes, if you	
18	MR. MASTRO: No. But, your Honor, I do believe this		18	decide to do it.	
19	is actually critically important, because it was the going out		19	MR. MASTRO: All right. We will, your Honor. We	
20	and obtaining of funders, sometimes who became co-conspirators,		20	will.	
21	sometimes who later felt they were duped and were part of a		21	THE COURT: Number 12.	
22	third-party fraud, it was the only reason they could sustain		22	MS. YOUNG: Number 12. Nextant is, I believe, under	
23	the action they way they did and litigate all around the world		23	Snaider's company.	
24	and bring in the Patton Boggses of the world and the many		24	THE COURT: Is that right, Mr. --	
25	national firms --		25	MS. YOUNG: We have the same objection.	
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1	THE COURT: This is true of every law school that		1	THE COURT: -- Mr. Mastro?	
2	would have accepted anybody of Patton Boggs as a student.		2	MR. MASTRO: Nextant is his company.	
3	Without that, they wouldn't be here.		3	THE COURT: Sustained.	
4	MR. MASTRO: Your Honor, as an essential part of the		4	13.	
5	scheme, part the RICO scheme was to defraud -- to either get		5	(Pause)	
6	co-conspirators or to defraud them into investing and thereby		6	Anybody have anything to say?	
7	be able to support the ability to try to extort Chevron not		7	MR. MASTRO: Well, your Honor, the relevance of the	
8	only by continuing the Lago Agrio litigation but the		8	documents, I think your Honor --	
9	litigations around the country. And the common law fraud claim		9	THE COURT: I'm fully appreciative of why you want to	
10	that has been sustained was one of defrauding third parties to		10	see them.	
11	the detriment of Chevron. If we are correct that the documents		11	MR. MASTRO: Right.	
12	will show Burford, maybe Kohn, others felt that they had been		12	THE COURT: Which is not the same thing as relevance.	
13	defrauded at certain points into funding, that was integral to		13	MR. MASTRO: I understand, your Honor.	
14	the LAPs being able to continue their effort to extort Chevron.		14	But since at the heart of the conspiracy it was the	
15	THE COURT: Thank you.		15	RICO defendants colluding with government officials to procure	
16	I'm sustaining, for the time being anyway, the		16	a thumb on the scale of fraudulent judgment in Ecuador, the	
17	objections to 9 and 10, save that Patton Boggs will produce		17	communications with the government officials we believe are	
18	executed funding agreements.		18	highly relevant. We don't see how they could be privileged.	
19	11. Are you guys capable of agreeing as to whether		19	We don't see how there could be a sovereign immunity question.	
20	Andres Snaider is a lawyer or not?		20	And, you know, we therefore think that they should have to	
21	MR. MASTRO: Your Honor, he apparently at times in his		21	produce those documents.	
22	life was a lawyer but we do not believe he is functioning as a		22	THE COURT: Ms. Young.	
23	lawyer more recently and certainly not in the capacities in		23	MR. MASTRO: To the extent they have a privilege	
24	which he participated in this case. In his more recent life he		24	claim, they can put it on a categorical log.	
25	hasn't been, to our understanding, practicing law.		25	THE COURT: I don't understand that point.	

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1	MS. YOUNG: I just want to clarify that the sovereign		1	MS. YOUNG: Right. And the only allegations that	
2	immunity objection relates to a completely separate		2	Chevron has made relate to the judgment, the Cabrera motion,	
3	representation of Patton Boggs for the Republic of Ecuador, and		3	and, I think, the appeal. If they're willing to limit it to	
4	although in the meet-and-confer I believe Chevron loosely		4	those items, I believe we would be prepared to respond.	
5	stated it wasn't really interested in that, they haven't		5	THE COURT: Do you have a lot of these documents	
6	committed to narrowing the scope of the request. So that		6	relating to other --	
7	really relates to things separate from the litigation.		7	MS. YOUNG: No. But what we do have are a lot of	
8	THE COURT: Can you enlighten me? Because I take it		8	documents relating to Patton Boggs' analysis of Chevron's	
9	that since the document request is for documents regarding		9	allegations in that regard. So every time Chevron --	
10	Chevron for the Chevron litigations, it would be hard to		10	THE COURT: Just let me stay with your point and then	
11	imagine if there were a separate representation in an unrelated		11	I'll let you go on.	
12	litigation, or representation of the Republic of Ecuador, that		12	But you're saying if they had flagged two or three or	
13	you would have any responsive documents in connection with that		13	four specific documents, because those are the ones they know	
14	representation; isn't that right?		14	about -- there may or may not be others -- and your problem is	
15	MS. YOUNG: Understood. I mean, if it's related to		15	with your analysis of those. And the way you propose to solve	
16	the Chevron litigation --		16	that problem is have them tell you the ones they suspect are	
17	THE COURT: Or to Chevron.		17	problematic, which they've already told you. You know what	
18	MS. YOUNG: As we -- with that limitation, yes, we		18	those are because that's what you are giving right back to me.	
19	understand, and we'll respond as we've indicated.		19	And the point of their request is to find out if there are	
20	THE COURT: So that limitation is in fact not a		20	others that they don't know about yet, and you want me to cut	
21	limitation, it is the scope of the question in the first place.		21	that out.	
22	And so I take it, then, that there is no sovereign		22	MS. YOUNG: Well, as drafted, this would also get to	
23	immunity objection, right?		23	all of Patton Boggs' work done in connection with Chevron's	
24	MS. YOUNG: Correct.		24	allegations. If there is a way to carve that out so that we	
25	THE COURT: OK. Now, with that established, is there		25	don't have to log every single time that Patton Boggs weighed	
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1	any further reason why there is anything to sustain here? That		1	in or analyzed an allegation, that would be helpful.	
2	resolves the objection subject --		2	THE COURT: OK. Mr. Mastro, what about that?	
3	MS. YOUNG: That resolves the objection subject to the		3	MS. YOUNG: I just want to clarify also, it is not as	
4	privilege log.		4	if we've identified documents that do relate to advance	
5	THE COURT: OK. So the objection is overruled.		5	knowledge of the judgment or anything like that. We don't	
6	Number 14. This, I take it, is the specific question		6	believe that those exist at all.	
7	that underlay the earlier much more general request that we		7	MR. MASTRO: Right --	
8	talked about for quite some time. Right?		8	THE COURT: I mean, you know, the fact is if you limit	
9	MR. MASTRO: Yes, your Honor.		9	that specifically to the judgment, I don't know one way or	
10	THE COURT: OK. Any reason why I shouldn't overrule		10	another, but I certainly have seen documents in this case in	
11	this?		11	which, if memory serves, it was Mr. Fajardo saying to	
12	MS. YOUNG: Your Honor, this request relates to --		12	Mr. Donziger he knew exactly what the judge was going to do	
13	it's so overbroad and it relates to any official communication,		13	about either terminating judicial inspections or whom he was	
14	order, statement, ruling, report, judgment, sentencia, escrito,		14	going to appoint as the global expert, etc., etc., there surely	
15	providencia, edict, or other writing issued by the Lago Agrio		15	are documents. Now, I don't know if Patton Boggs has them and	
16	Court, and also includes the appeal.		16	so forth, but there are such documents that have emerged at one	
17	THE COURT: Yes. So?		17	point or another. I haven't seen many but there are some.	
18	MS. YOUNG: So, again, this goes to -- we've asked		18	Mr. Mastro.	
19	Chevron to specify and in particular orders or rulings or		19	MR. MASTRO: Yes. Correct, your Honor. But I don't	
20	judgments that they're interested in rather than pretty much		20	think the fact that we've been so diligent in discovery that we	
21	everything related to the Lago Agrio litigation.		21	have a sense of some of them now, I'm not a soothsayer. I'm	
22	THE COURT: Yes. But it is not everything related to		22	shocked at how many we are already aware of.	
23	the Lago Agrio litigation. It relates to the writing of court		23	I think that this is a pretty straightforward,	
24	documents issued by those courts. I mean, I, of course, I say		24	targeted request -- the writing, drafting of orders, opinions,	
25	"writing," there are more words, but it all amounts to that.		25	decisions by anyone in the Lago-related team. So they are the	

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1	ones who will know that. I was able to say "several" because		1	MR. MASTRO: Yes. Just one other thing, your Honor,	
2	of what we've been fortunate enough to be able to learn, but		2	just on 15, just to close the loop, and we will come back to	
3	they're going to know whether there are more. There could well		3	their affirmative defense.	
4	be more. And I shouldn't have to tell them what my (1)		4	It is also the case that among our allegations is the	
5	suspicions are or what else I may have done as a matter of my		5	Lago Agrio litigation was itself a fraudulent act or an attempt	
6	own work product to know. OK? They should know, and produce.		6	to get around the settlement and release agreements that would	
7	THE COURT: That objection is overruled.		7	have precluded it. So I just wanted to put that on the record,	
8	MS. YOUNG: Your Honor, may I just clarify?		8	your Honor, as to why it would be relevant to that.	
9	THE COURT: Yeah. Sure.		9	THE COURT: We are all indebted to you for that.	
10	MS. YOUNG: Are you expecting, in response to Request		10	MR. MASTRO: Thank you, your Honor.	
11	Number 14, that Patton Boggs will need to log all of its		11	THE COURT: Number 16. This is the two criminal cases	
12	internal communications relating to Chevron's allegations, as		12	that we were all dealing with at the beginning of all the	
13	opposed to documents evidencing the, you know, ghostwriting or		13	1782s, right?	
14	advance knowledge?		14	MR. MASTRO: Yes, your Honor.	
15	THE COURT: I'm expecting you to comply with this as		15	THE COURT: OK. So where are we on this?	
16	written.		16	MR. MASTRO: Your Honor, it's those criminal cases and	
17	MS. YOUNG: I believe as written it would seek		17	any attempts to initiate criminal investigations, that those	
18	documents that are purely Patton Boggs' analysis and not		18	ones obviously led to prosecution that later had to be dropped,	
19	evidence of some other fraud. Patton Boggs has spent a		19	and we think they are clearly relevant to the case. It was	
20	considerable amount of time analyzing Chevron's allegations		20	part of their scheme to get these Chevron --	
21	relating to ghostwriting and advance knowledge of things.		21	THE COURT: This all began before Patton Boggs was on	
22	THE COURT: I'm not elaborating on what I've said.		22	the job, right?	
23	Number 15. What the heck does this got to do with		23	MR. MASTRO: It did, your Honor, but Patton Boggs was	
24	anything, Mr. Mastro?		24	on the job when the criminal charges got dropped against the	
25	MR. MASTRO: Well, your Honor, it goes to affirmative		25	lawyers in Ecuador and may well have documents reflecting the	
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1	defenses that have been raised in this case.		1	back and forth on that. I think that it was widely recognized	
2	THE COURT: What the affirmative defense?		2	that on the LAPs-related team that the pendency of those	
3	MR. MASTRO: Well, they raised affirmative defenses		3	criminal charges reflected poorly on justice in Ecuador, and we	
4	relating to fraud where they accuse Chevron and its		4	believe that there will be relevant documents there. The	
5	predecessors of having engaged in fraudulent activity in		5	exchanges that Patton Boggs had with others about those cases,	
6	connection with the remediation.		6	or any other investigations that -- the criminal investigation	
7	THE COURT: What pleading are you referring to? And		7	that the LAPs were trying to get initiated against Chevron	
8	I'm also -- you know, let's suppose it is there. We'll then go		8	there.	
9	on to the question of what difference it makes.		9	THE COURT: Ms. Young.	
10	MR. MASTRO: Well, obviously, your Honor, we don't		10	MS. YOUNG: Patton Boggs was not involved in any	
11	think there was any fraud or failure to perform, so we wanted		11	effort to encourage prosecution of Chevron's attorneys in	
12	to see if they've got any beef there.		12	Ecuador, and Chevron knows that because it has Mr. Donziger's	
13	THE COURT: OK. On the subject of where is the beef,		13	files.	
14	what pleading and what defense?		14	You know, to the extent that Patton Boggs --	
15	MR. MASTRO: They are pulling it up now, your Honor.		15	THE COURT: Well, then you won't have many documents,	
16	That was one of the affirmative defenses that they alleged		16	right?	
17	alleging fraud.		17	MS. YOUNG: True. Although, you know, again, Patton	
18	(Pause)		18	Boggs had discussions about the criminal proceedings with its	
19	Well, we will pull it up for your Honor and give it to		19	co-counsel and internally, and I don't see any reason why	
20	you.		20	Patton Boggs should be burdened with reviewing and logging	
21	THE COURT: Do you want to come back to that?		21	those documents where they are not relevant to these	
22	MR. MASTRO: Yes. We will, your Honor.		22	proceedings.	
23	THE COURT: All right. Number 16. I take it the		23	THE COURT: What would you do differently if this	
24	criminal case is defined as the Veiga and Pallares; is that		24	request were in the case in the subpoena than you would do if	
25	right, Pallares?		25	it were not in terms of searching and things like that -- in	

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1	terms of searching?		1	Honor, what's the logical import of that? Criminal charges	
2	MS. YOUNG: In terms of searching, I think we would		2	were pending. The government prosecutor was already pursuing	
3	probably need to do a search for "criminal," using language		3	criminal charges. It means that Patton Boggs is telling the	
4	around "criminal," the word "criminal."		4	LAPs, who have such a cozy relationship with the government,	
5	THE COURT: And the incremental cost of sticking that		5	can't you see if you can make this go away. And they go to the	
6	one-word search term in there is what?		6	government and somehow make it go away. That's extremely	
7	MS. YOUNG: We don't have a figure on the incremental		7	relevant.	
8	cost of that figure alone.		8	And, your Honor, the premise of the question was	
9	THE COURT: Right. But it's got to be essentially de		9	that's not necessarily something that reflects poorly on Patton	
10	minimis, right? And so the difference is that if I leave it		10	Boggs. The discovery is to go after the RICO defendants. Now,	
11	in, you're going to get a certain number of hits that you		11	they are a co-conspirator.	
12	wouldn't otherwise have gotten, and then, presumably, somebody		12	THE COURT: I understand.	
13	is going to have to look at the hits and may have to schedule		13	MR. MASTRO: So we think it goes to the heart of the	
14	it.		14	case and the kind of things that went on in Ecuador, and that	
15	Mr. Mastro, why should I conclude that the likelihood		15	the very limited burden -- they don't suggest a huge number of	
16	that doing that will lead to anything of significance is		16	hits. We never heard about any kind of huge number of hits.	
17	sufficiently likely to go to the trouble?		17	We heard they don't think they have anything or much on this	
18	MR. MASTRO: Two reasons, your Honor. I don't think		18	subject. But if we get hits, even of the type your Honor	
19	that it's much of a burden at all, since they claim such a		19	describes, hugely relevant to us.	
20	limited universe.		20	THE COURT: Ms. Young, what about Mr. Mastro's last	
21	Two --		21	point?	
22	THE COURT: Well, it depends on how many hits.		22	MS. YOUNG: Well, first of all, the two attorneys were	
23	MR. MASTRO: Two, your Honor, it seems to me it is		23	1782 parties, and, therefore, I do believe a large number of	
24	extremely relevant. I didn't say, as Ms. Young implied, that		24	hits will result from this type of search. And it just adds to	
25	Patton Boggs was involved in the inception of trying to get		25	the burden of -- while, in and of itself it may be a small	
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1	them prosecuted. I said to the Court that Patton Boggs was on		1	number, it adds to the overall burden in responding to the	
2	the scene in an important role in the overarching litigation		2	subpoena.	
3	when the decisions were made to drop the criminal charges, so		3	THE COURT: Everything adds to the overall burden.	
4	they likely had communications with their colleagues.		4	That is true in a nine-document case.	
5	THE COURT: Right. I understand that.		5	MS. YOUNG: Right. With respect to whether -- I mean,	
6	Now, to hit a home run in this, what you would need to		6	if you will assume that Patton Boggs had some say or control in	
7	find -- and I don't suggest it exists, I don't know one way or		7	how the criminal proceedings unfolded in Ecuador, even if	
8	the other -- what you would need to find is the document in		8	Patton Boggs did say, oh, you know, these proceedings should go	
9	which somebody who was involved earlier says to Patton Boggs		9	away, that to me is not relevant to the RICO action. It	
10	this was a put-up job, the fix was in in Ecuador -- and, again,		10	certainly isn't -- getting them off the hook isn't a predicate	
11	I'm not saying that's the case, but you would have to hit that		11	act under RICO, and I just think that the burden here outweighs	
12	kind of a long ball, and it wouldn't reflect adversely on		12	any potential location of any relevant documents.	
13	Patton Boggs -- just a second -- if in fact, as you seem to		13	THE COURT: I am certainly not satisfied by the burden	
14	assume, they said, My God, stop it.		14	argument here, because there is really no basis for me to	
15	Isn't it much more likely that if we go down this path		15	conclude that the burden would be appreciable at all, the	
16	what happens is, putting aside all the work product issues and		16	incremental burden, so that's overruled. And the objection	
17	so forth, you come up with documents in which, whether on		17	altogether is overruled.	
18	recommendation of Patton Boggs or otherwise, a conclusion is		18	I think it's, you know, a reasonably close call as to	
19	reached that it would be really nice if these things went away		19	relevance, but I think the likelihoods are that it may be -- it	
20	because they were getting killed in the 1782 cases because of		20	is quite possibly probative of material issues in the case.	
21	the criminal prosecutions in Ecuador, certainly on timing, and		21	And so in the absence of a convincing reason not to allow it, I	
22	probably more broadly in some respects, and this is an		22	will allow it.	
23	unnecessary and unhelpful distraction in the United States?		23	OK. 17.	
24	Isn't that the more likely place it comes out?		24	MR. MASTRO: Once again, your Honor, we think this	
25	MR. MASTRO: Even if that's where it came out, your		25	goes to a central element of the RICO conspiracy. The RICO	

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1	defendants engaged in, you know, fraudulent testing,		1	THE COURT: Overruled.	
2	manipulative test results. They ran what they called a Selva		2	MR. MASTRO: Your Honor wanted to know where in the	
3	Viva lab out of a hotel room. They then used something called		3	complaint a reference is to --	
4	a Havoc lab that the crew depicts Donziger running in ex parte		4	THE COURT: Do you want to go back to that one? This	
5	to a judge to get him to vacate an inspection order because in		5	was number 15.	
6	his private documents he said it would be a disaster. And		6	MR. MASTRO: Yes. Number 15, your Honor.	
7	there was testimony that, you know, from Stratus and Sand made		7	THE COURT: I thought it was not in the complaint. I	
8	that they didn't even have equipment to do the tests they said		8	thought it was in a responsive pleading.	
9	they did.		9	MR. MASTRO: It's mentioned both in the complaint and	
10	THE COURT: These were the original judicial		10	in responsive pleading -- or I should say Donziger's proposed	
11	inspections, or something else?		11	responsive pleading. He alleges fraud in the remediation at	
12	MR. MASTRO: This, your Honor, includes both the		12	paragraphs 128 and 138. That's docket 561 -- 567-1. Of	
13	original judicial inspections and what the plaintiffs' team did		13	course, we hope that he will not be permitted to do that	
14	subsequently.		14	proposed amended answer and counterclaims because we have	
15	Their whole case, their whole PR campaign in this		15	opposed it on grounds of futility.	
16	Court, they've, oh, but there really was an environmental		16	But we also reference it with -- remediation fraud was	
17	disaster there. They called it Chernobyl and everything else.		17	the basis for the criminal indictments of the two Chevron	
18	Yet the tests they did were fraudulent; the scientific evidence		18	attorneys. We allege it as a RICO predicate, and it's in the	
19	wasn't there. You will recall Donziger and the crew outtakes		19	first amended complaint at paragraph 69 and paragraphs 199	
20	talking to his own experts just after they had briefed Cabrera		20	through 213. So it is directly related to the criminal charges	
21	prior to his appointment, Donziger turns to his experts after		21	that were brought and ultimately dismissed against the two	
22	they tell him the groundwater contamination evidence isn't		22	Chevron attorneys.	
23	there, he says: Don't worry about it. This is Ecuador. For		23	THE COURT: Let me get it in front of me.	
24	the Court, it's all smoke and mirrors and bullshit.		24	(Pause)	
25	So this is a central part of the fraud, to create the		25	What is the docket item of the amended criminal	
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1	fiction that there actually was evidence to support their		1	complaint?	
2	claims, when in so many respects the scientific evidence -- the		2	MR. MASTRO: The document number of the first amended	
3	genuine testing, even their own testing that wasn't fraudulent,		3	complaint is --	
4	showed that the environmental contamination they alleged, they		4	THE COURT: I got it. OK. Tell me the paragraphs	
5	trumpeted to the world, and they continue to trumpet to the		5	again, please.	
6	world, was not -- the evidence was not there, and that		6	MR. MASTRO: The paragraphs, your Honor, are	
7	certainly there was no environmental contamination attributable		7	paragraphs 69 and paragraphs 199 through 213.	
8	to Texaco 20 years before, having left the country and		8	(Pause)	
9	remediated before it left. So we think we're entitled to that		9	THE COURT: All right. Ms. Young, what about 15?	
10	evidence because it shows a core -- it debunks a core element		10	MS. YOUNG: With respect to 15, and, again, a number	
11	of their defense and proves a core element of our RICO		11	of others, your Honor, when you ordered Mr. Donziger to respond	
12	conspiracy -- the fraud, the big fraud, which was that they		12	to the subpoena, your reasoning was based on the fact that the	
13	lied about the science and there wasn't an environmental		13	proposed discovery focused on matters where Donziger was an	
14	disaster attributable to Texaco that occurred there in Ecuador.		14	actor and a witness. Here we have the exact opposite	
15	THE COURT: Ms. Young.		15	situation. We have a case where Chevron is seeking access to	
16	MS. YOUNG: This request, like several others, relates		16	information that Patton Boggs gathered the way attorneys	
17	to events that happened well before Patton Boggs' involvement		17	normally gather such information in the course of a litigation.	
18	in this litigation, and we believe that it is inappropriate for		18	THE COURT: Yes. I'm familiar with your argument and	
19	Patton Boggs to have to even respond to these or search for		19	I understand what your argument is, but, with respect, you have	
20	documents that relate to events that predate their involvement.		20	taken what I said out of context and you are attempting to	
21	You know, Patton Boggs was not a witness to these		21	misapply it here.	
22	events. If anything, it learned about the allegations relating		22	What I said was that, among other things supporting a	
23	to these events later.		23	deposition of Mr. Donziger under Section 1782, was that this	
24	THE COURT: That's the objection?		24	was a case that saw his knowledge as a percipient witness and a	
25	MS. YOUNG: Yes.		25	principal actor, right? That was not the basis on which I	

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1	ordered discovery. It was a factor I considered. And it's a		1	Lago Agrio Court, including the settling experts.	
2	relevant factor, all right, but it doesn't sweep the boards --		2	THE COURT: Who are the settling experts?	
3	not even close.		3	MR. MASTRO: They would have been persons appointed by	
4	MS. YOUNG: As we've --		4	the Court. Each side had their own experts and then there were	
5	THE COURT: I'm not finished.		5	settling experts --	
6	And was all made in the context of rejecting a		6	THE COURT: This is back in the judicial inspections	
7	Friedman argument that was made on behalf of Mr. Donziger.		7	era?	
8	Now, I do fully appreciate the broader point that you		8	MR. MASTRO: Correct, your Honor.	
9	are making, and I think in more than a few degrees the rulings		9	We gave a long list of the people in that category, so	
10	that I have made, a good many of which this morning have		10	this is not one where they don't know who we're talking about.	
11	avored you, took that into account in the equation that led me		11	So it included Cabrera and his technical team, but it also	
12	to the results I came to. But the simple fact that the		12	included, but not necessarily limited to, if they are aware of	
13	allegations -- excuse me, that the alleged fraud with respect		13	others in this category that we haven't listed, but we list the	
14	to the Texpet remediation and release predated Patton Boggs'		14	20 or so persons who fell into this category.	
15	arrival on the scene is not a get-out-of-jail-free card on		15	THE COURT: And this is all before Patton Boggs gets	
16	discovery. It may have learned things. Things may have been		16	involved, right?	
17	said to it that they may be protected by privilege; they may		17	MR. MASTRO: Your Honor, it is before they became	
18	not be protected by privilege. They may be work product; they		18	involved that these people were doing their work, but, your	
19	may not be work product. If they are work product, there maybe		19	Honor, as you know, Patton Boggs came on the scene to deal with	
20	be good cause shown for overcoming work product even in the		20	the crisis. So --	
21	absence of any crime fraud exception. Now, it just doesn't get		21	THE COURT: I understand. The Cabrera crisis?	
22	you all the way home.		22	MR. MASTRO: The Cabrera crisis, that related in part	
23	With that said, on this one I'm going to go your way,		23	to the difference between the joint judicial inspections and	
24	despite the fact that I'm not doing it on the basis that you		24	then going to a single global damage expert. So there are	
25	suggested. It is a factor but it is only one factor.		25	likely to be documents that Patton Boggs has, exchanges it had	
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1	The objection to 15 is sustained.		1	with co-counsel or others, about that process, about particular	
2	OK. I think we are up to 18, are we not? Maybe not.		2	experts, about communications with particular experts as they	
3	Yes. What happened to 17?		3	tried to salvage or resuscitate the fraud.	
4	There is no 17 on the joint submission that you guys		4	THE COURT: Ms. Young.	
5	gave to me.		5	MS. YOUNG: This is actually a category of documents	
6	MR. MASTRO: There is, your Honor. That was the		6	that I would like to talk about with more specifics about the	
7	fraudulent testing, your Honor.		7	burden on Patton Boggs.	
8	THE COURT: I thought that was 16. No, that was		8	First, as you just heard, there is a long list of	
9	criminal cases.		9	experts, and their involvement predated Patton Boggs'	
10	I see. Page 19 has gone awry on me. I'll find it.		10	involvement in the case.	
11	So we are up to 18. I found it. OK. What about 18?		11	We did a search -- I mean, just isolating Cabrera --	
12	MS. YOUNG: Patton Boggs has the same objection as to		12	obviously, he is the one that has been discussed the most	
13	the timing of the events that predated Patton Boggs'		13	here -- just looking at our top 22 document custodians' e-mail	
14	involvement.		14	only, there were over 33,000 documents relating to Cabrera.	
15	THE COURT: This one is overruled. This is right at		15	Within Patton Boggs' document management system, there were	
16	the heart of what the plaintiff is halfway home on with respect		16	another 11,000-plus documents related to Cabrera alone. That	
17	to the crime fraud exception -- or nearly halfway home, I		17	in and of itself is a huge burden, and those documents are	
18	should say.		18	likely to be only privileged documents, only documents where	
19	19. Now, Mr. Mastro, when you say "Court experts"		19	Patton Boggs is analyzing and dealing with Chevron allegations.	
20	here, I realize I could go back to the Mathison definitions,		20	So when we talk about burden and the burden of logging	
21	but just tell me who they are.		21	all of these communications, even where it is a categorical	
22	MR. MASTRO: Sure, your Honor.		22	privilege log, it still requires a significant amount of review	
23	THE COURT: Is this Cabrera? Is it Cabrera plus the		23	and analysis to comply with this request.	
24	cleansing experts, so-called, or is it a broader universe?		24	THE COURT: Right. Look, we got two questions here.	
25	MR. MASTRO: It refers to the experts appointed by the		25	We got Cabrera and we got everybody else.	

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1	Now, let's put Cabrera to one side. Cabrera was after		1	probable cause, whether particular documents are in furtherance	
2	this introductory point -- I mean, Cabrera is what this whole		2	of that fraud.	
3	fight has been about for a period of time. It's moved beyond		3	Now, it may well be that there are a lot in Patton	
4	it. It's broadened. But that was the flashpoint where this		4	Boggs' files, if indeed there are any, that aren't in	
5	really all blew up. Right?		5	furtherance; there may be others that are. I can't tell even	
6	And counsel is nodding yes.		6	how to approach that until and unless they are scheduled.	
7	MS. YOUNG: Yes.		7	So at least for now I'm going to overrule that	
8	THE COURT: And that there should be a lot of hits on		8	objection and we'll see where we get.	
9	Cabrera is not in the slightest surprising.		9	Number 20.	
10	Given the evidence so far, it also ought not be		10	MR. MASTRO: Yes, your Honor.	
11	surprising that the case for telling you to do the review and		11	THE COURT: Isn't this covered by something already,	
12	to proceed further with Cabrera without making a final judgment		12	or perhaps not?	
13	on it now is pretty compelling. But we're talking about a		13	MR. MASTRO: Yes, your Honor. I think there is	
14	whole bunch of other people that I never heard of before this		14	substantial overlap with number 14.	
15	morning except in generic terms, and I don't hear you saying		15	THE COURT: All right. So why shouldn't my ruling be	
16	anything about any likelihood of a lot of hits with respect to		16	the same on this one?	
17	them. And I don't have any reason to think that there is any		17	MR. MASTRO: It should be the same. It includes	
18	particular burden problem with respect to them, because they've		18	Cabrera-related submissions to the court is the only	
19	just not been a focus of any of the litigation that's been		19	difference.	
20	before me since 2010, I think.		20	THE COURT: OK.	
21	Why is that not a perfectly reasonable view?		21	MR. MASTRO: Thank you, your Honor.	
22	MS. YOUNG: Maybe that is an indication of the		22	THE COURT: And 21, also an overlap?	
23	relevance of these other experts.		23	MR. MASTRO: It looks like -- your Honor, it has	
24	THE COURT: Well, you may be right, first of all. And		24	overlap with 19, but it's more comprehensive about Cabrera and	
25	it may be, alternatively, that it is because Chevron hasn't		25	Cabrera's team and all documents relating to Cabrera and	
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1	figured out that there was other stuff going on with some of		1	Cabrera's team and his reports. It does appear to be, you	
2	these people.		2	know, within the scope of your prior rulings as an overall	
3	Now, I've got a complaint that alleges that there was		3	objection.	
4	corruption with this process in Ecuador, and this is a very		4	THE COURT: Don't you think it would have been a good	
5	logical place to look at it; isn't it?		5	idea to have read through this stuff before you served the	
6	MS. YOUNG: Again, the fact that it predates Patton		6	subpoena?	
7	Boggs' involvement in the litigation, you know, tells us that		7	MR. MASTRO: Your Honor, I think that there are some	
8	it is likely to only involve privileged communications and a		8	requests that overlap, so my apologies for that.	
9	large number of them, potentially.		9	THE COURT: All right. The ruling is the same as on	
10	THE COURT: Yes. But you are overlooking the fact		10	19.	
11	that there has effectively been, as I remember it, summary		11	I'll probably take a closer look at those three before	
12	judgment for the proposition that there was corruption in the		12	I sign an order and may modify it slightly, but unless you hear	
13	appointment of Cabrera, that Cabrera's report was in		13	otherwise, that's the ruling.	
14	significant degrees ghostwritten by Patton Boggs' clients, and		14	22. Uhl, Baron Rana & Associates?	
15	it is not illogical in those circumstances for a reasonable		15	MR. MASTRO: Your Honor, UBR was a consulting firm	
16	person to suspect, which I think is essentially the standard,		16	that was working for the plaintiffs and became an integral part	
17	that that may have happened before the global expert framework		17	of the Cabrera fraud because the plaintiffs basically	
18	came on the scene with earlier experts.		18	assigned --	
19	Now, they don't have to prove summary judgment to get		19	THE COURT: They gave him part of the Cabrera report,	
20	over that hurdle; all they have to prove is probable cause.		20	right?	
21	Now, I'm not there yet. I don't know whether we get there or		21	MR. MASTRO: Exactly. And they wrote it and they	
22	not. I want to hear you guys fully on that subject. But it's		22	passed him off in the Cabrera report as if he was part of	
23	not an unreasonable point of view to think it is possible that		23	Cabrera's technical team when he was really on the plaintiffs'	
24	we get there.		24	payroll.	
25	And then the next question is, assuming there is		25	THE COURT: I see.	

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1	MR. MASTRO: So we think it is highly relevant. They		1	So we would think it is clearly relevant. To the extent they	
2	are refusing to produce anything. They have been fighting		2	think there are privilege claims involved -- although these are	
3	tooth and nail on the 1782 in New Jersey and only produced some		3	testifying experts, hard to imagine what the privilege claims	
4	documents there. We are not asking them to produce the same		4	would be -- they can categorically log them.	
5	documents they produced in New Jersey, but we're trying to get		5	THE COURT: Well, but your request is for all	
6	the UBR-related documents and we have not yet gotten a full		6	documents relating to the work of these people.	
7	production there.		7	MR. MASTRO: Yes, your Honor.	
8	THE COURT: What about it, Ms. Young?		8	THE COURT: And that would include not just documents	
9	MS. YOUNG: First of all, Patton Boggs represents UBR		9	from UBR or -- I'm sorry, not UBR but the other persons, it	
10	in the 1782 proceeding that I believe is ongoing in New Jersey.		10	would include Patton Boggs' internal stuff, right?	
11	You know, I think it is more appropriate, since Chevron is		11	MR. MASTRO: Yes. But, your Honor, we believe and we	
12	pursuing the same discovery in that litigation, that it		12	hope that your Honor will ultimately rule that the whole	
13	continue to pursue it there and be bound by whatever rulings		13	cleansing expert process, as Judge Francis already ruled in the	
14	are made in New Jersey. It is entirely duplicative.		14	Count Nine case, was part of a crime fraud and privilege was	
15	THE COURT: The standards are different; right?		15	vitiated because that was part of the crime fraud. It was the	
16	MS. YOUNG: Your Honor, the standards may be		16	coverup of the Cabrera fraud and the attempt to whitewash it.	
17	different, but I believe the relevant documents that they are		17	So we believe there are internal communication on this	
18	seeking is all the same.		18	that will also not be privileged. We think it is an example	
19	THE COURT: That may be. But if they are entitled to		19	of -- it is not simply whether it was in furtherance of a crime	
20	them in one action and not in the other, the fact that the		20	fraud, and they didn't necessarily know that it was being used	
21	standards are different matters, doesn't it?		21	to further a crime fraud. Here they knew exactly what they	
22	MS. YOUNG: Chevron hasn't indicated what it believes		22	were doing, and they are the ones who engineered it to try to	
23	Patton Boggs has in its possession that it is not able to get		23	cover up the Cabrera fraud and to, you know, salvage the case	
24	through the 1782 action.		24	in a way that was a transparent, in our view, fraud at the end	
25	THE COURT: Do you normally when you seek discovery,		25	of the day.	
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1	Ms. Young, tell the other side what it is that you think you		1	So we believe that they should categorically log their	
2	can get from them that you don't otherwise have? I would		2	internal documents, and when your Honor makes a crime fraud	
3	answer that rhetorical question myself. I never heard of		3	ruling or reviews those internal documents you will see that.	
4	lawyers doing that.		4	I could be quoting chapter and verse of what we already have	
5	MS. YOUNG: No. But this is an unusual situation in		5	that I think establishes the whole cleansing expert process and	
6	which a law firm is being subpoenaed for client documents. I		6	the internal deliberations they had that were a crime fraud.	
7	think it is more appropriate for those documents to be sought		7	There have been a number of documents produce out of Donziger	
8	within the pending 1782 proceeding.		8	which I think go to this already. And Patton Boggs' lawyers	
9	THE COURT: Overruled.		9	admitting exactly what they were doing to cleanse, to try to	
10	23.		10	salvage the Cabrera fraud, and we think their own internal	
11	MR. MASTRO: Well, your Honor, again I think the		11	documents will be even more candid on this subject. So we	
12	relevance of the documents is clear. Patton Boggs is refusing		12	think this goes really to one of the hearts of the case,	
13	to produce anything in this regard even though this was an		13	because at the end of the day the judgment purports to rely on	
14	essential role it played in the conspiracy. It came up with		14	some of these folks who themselves relied on Cabrera and did	
15	the cleansing experts' concept and ran with it, and coordinated		15	nothing independent. So this really goes to the heart of the	
16	those cleansing experts to try and whitewash the Cabrera fraud,		16	fraud in Ecuador.	
17	even though those cleansing experts did no independent work,		17	THE COURT: Wasn't there disclosure that they did	
18	did not go to Ecuador independently. The Patton Boggs'		18	nothing independent?	
19	coordinating consultant wrote two of their reports -- never		19	MR. MASTRO: Their reports do not -- their reports are	
20	disclosed that. And those experts were never told about the		20	carefully crafted to give the impression that they reached	
21	lack of independence of the Cabrera report and largely		21	independent conclusions based on their own work. There are in	
22	piggybacked on what Cabrera did, which was not done by Cabrera		22	one or two them a reference to Cabrera, but they were carefully	
23	at all, it was done by plaintiff's consultants.		23	crafted, working with the Weinberg group, Patton Boggs	
24	So this is an essential part of the RICO conspiracy		24	hand-picked consultants to coordinate them and a group that	
25	and fraud claim that Patton Boggs engineered in every respect.		25	drafted two of those reports, such that when each of those six	

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1	cleansing experts actually testified, some of them expressed		1	Eric Westenberger from Patton Boggs, Edward Yennock from Patton	
2	shock that Cabrera wasn't independent. All of them admitted,		2	Boggs, and Jonathan Peck from Patton Boggs.	
3	well, I didn't actually do anything independently. Some of		3	THE COURT: And it was Mr. Westenberger whom you've	
4	them admitted they wouldn't have reached those conclusions or		4	identified at page 67, lines 19 and 20 of the transcript	
5	they viewed them as hypothetical conclusions based on premises		5	moments ago as your counsel; is that correct?	
6	that they were given, not on any independent work they did or		6	MS. YOUNG: I was referring to Patton Boggs, who is my	
7	any independent data they collected. They just used what was		7	client. I misspoke.	
8	in the Cabrera report, which was drafted by the plaintiffs and		8	(Pause)	
9	with their tainted data. So they didn't -- they weren't a		9	THE COURT: The objection is overruled. You can at	
10	model of clarity admitting how little they did or that they		10	least schedule the documents. Then we'll see whether there is	
11	weren't relying on anybody else.		11	crime fraud here.	
12	THE COURT: Thank you.		12	All right. I think this is a good point to break, and	
13	Ms. Young.		13	we will resume at 2:15 on Thursday.	
14	MS. YOUNG: Your Honor, a couple of points here.		14	OK. I thank you all. This has been moving better	
15	One is that these so-called cleansing experts		15	than I expected.	
16	certainly did disclose their reliance on the Cabrera data.		16	MR. MASTRO: Thank you very much, your Honor. I	
17	And, in fact, I think almost all of the listed individuals are		17	appreciate all the time.	
18	the subject of various 1782 proceedings around the country, and		18	THE COURT: Thank you.	
19	in none of those proceedings has the Court found a crime fraud		19	MR. MASTRO: Thank you.	
20	exception.		20	(Adjourned to 2:15 p m., Thursday, September 27, 2012)	
21	THE COURT: Judge Francis did, right?		21		
22	MR. MASTRO: So did the Weinberg court, your Honor,		22		
23	D.C.		23		
24	MS. YOUNG: As the Southern District of Ohio said in		24		
25	the Barnthouse 1782 action --		25		
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1	THE COURT: May I have an answer to my question?				
2	MS. YOUNG: I'm sorry, your Honor.				
3	THE COURT: Judge Francis did, correct?				
4	MS. YOUNG: I believe that finding was vacated, your				
5	Honor.				
6	THE COURT: By whom?				
7	MS. YOUNG: According to my counsel, with the Weinberg				
8	decision it was vacated.				
9	THE COURT: Judge Francis didn't write the Weinberg				
10	decision, did he?				
11	Counsel, do you know who Judge Francis is.				
12	MS. YOUNG: Yes, I do, your Honor.				
13	May I confer with my client for a minute?				
14	THE COURT: Yes.				
15	(Pause)				
16	MS. YOUNG: Your Honor, it is my understanding, after				
17	conferring with counsel, that Judge Francis relied entirely on				
18	your Honor's decision on crime fraud, which was vacated by the				
19	Second Circuit.				
20	THE COURT: I haven't rendered a decision on crime				
21	fraud, and no such decision has gone to the Second Circuit, let				
22	alone been vacated by it.				
23	Now, Ms. Young, would you identify the three other				
24	people at the table with you other than Mr. Leader?				
25	MS. YOUNG: I stand corrected, your Honor. This is				

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EXHIBIT 9



Microsoft Online Privacy Statement

(last updated April 2012)

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We self-certify compliance with:



This privacy statement applies to websites and services of Microsoft that collect data and display these terms, as well as its offline product support services. It does not apply to those Microsoft sites, services and products that do not display or link to this statement or that have their own privacy statements.

Please read the Microsoft Online Privacy Statement below and also any supplemental information listed to the right for further details about particular Microsoft sites and services you use. Some products, services

or features mentioned in this statement may not be available in all markets at this time. Additional information on Microsoft's commitment to protecting your privacy can be found at <http://www.microsoft.com/privacy>.

Collection of Your Personal Information

We collect information as part of operating our Websites and services.

- At some Microsoft sites, we ask you to provide personal information, such as your e-mail address, name, home or work address, or telephone number. We may also collect demographic information, such as your ZIP code, age, gender, preferences, interests and favorites. If you choose to make a purchase or sign up for a paid subscription service, we will ask for additional information, such as your credit card number and billing address.
- In order to access some Microsoft services, you will be asked to sign in with an e-mail address and password, which we refer to as your Microsoft account. By signing in on one Microsoft site or service, you may be automatically signed into other Microsoft sites and services that use Microsoft account. For more information, see the Windows Live ID privacy supplement.
- We collect additional information about your interaction with Microsoft sites and services without identifying you as an individual. For example, we receive certain standard information that your browser sends to every website you visit, such as your IP address, browser type and language, access times and referring Web site addresses. We also use Web site analytics tools on our sites to retrieve information from your browser, including the site you came from, the search engine(s) and the keywords you used to find our site, the pages you view within our site, your browser add-ons, and your browser's width and height.
- We use technologies, such as cookies and web beacons (described below), to collect information about the pages you view, the links you click and other actions you take on our sites and services.
- We also deliver advertisements (see the Display of Advertising section below) and provide Web site analytics tools on non-Microsoft sites and services, and we collect information about page views on these third party sites as well.
- When you receive newsletters or promotional e-mail from Microsoft, we may use web beacons (described below), customized links or similar technologies to determine whether the e-mail has been opened and which links you click in order to provide you more focused e-mail communications or other information.

In order to offer you a more consistent and personalized experience in your interactions with Microsoft, information collected through one Microsoft service may be combined with information obtained through other Microsoft services. We may also supplement the information we collect with information obtained from other companies. For example, we may use services from other companies that enable us to derive a general geographic area based on your IP address in order to customize certain services to your geographic area.

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Use of Your Personal Information

Microsoft collects and uses your personal information to operate and improve its sites and services. These uses include providing you with more effective customer service;

Supplemental Privacy Information

- [Bing](#)
- [Messenger](#)
- [Microsoft Advertising](#)
- [Microsoft Employment Candidates](#)
- [Microsoft Tag Reader](#)
- [MSN](#)
- [Office.com](#)
- [Support Services](#)
- [Windows Live](#)
- [Windows Live ID](#)
- [WindowsMedia.com](#)
- [Xbox LIVE, Games for Windows LIVE and Xbox.com](#)

Related Links

- [FTC Privacy Initiatives](#)
- [Security at Home](#)
- [Silverlight Privacy Statement](#)
- [Trustworthy Computing](#)

making the sites or services easier to use by eliminating the need for you to repeatedly enter the same information; performing research and analysis aimed at improving our products, services and technologies; and displaying content and advertising that are customized to your interests and preferences. For more information about the use of information for advertising, see the [Display of Advertising](#) section below.

We also use your personal information to communicate with you. We may send certain mandatory service communications such as welcome letters, billing reminders, information on technical service issues, and security announcements. Some Microsoft services, such as Windows Live Hotmail, may send periodic member letters that are considered part of the service. Additionally, with your permission, we may also occasionally send you product surveys or promotional mailings to inform you of other products or services available from Microsoft and its affiliates, and/or share your personal information with Microsoft partners so they may send you information about their products and services. You can opt-out from receiving newsletters or promotional e-mail anytime by using this web form or by following the steps as described in the respective newsletter or promotional e-mail.

Personal information collected on Microsoft sites and services may be stored and processed in the United States or any other country in which Microsoft or its affiliates, subsidiaries or service providers maintain facilities. Microsoft abides by the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Economic Area, and Switzerland. To learn more about the Safe Harbor program, and to view our certification, please visit <http://www.export.gov/safeharbor>.

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Sharing of Your Personal Information

Except as described in this statement, we will not disclose your personal information outside of Microsoft and its controlled subsidiaries and affiliates without your consent. Some Microsoft sites allow you to choose to share your personal information with select Microsoft partners so that they can contact you about their products, services or offers. Other sites, such as MSN instead may give you a separate choice as to whether you wish to receive communications from Microsoft about a partner's particular offering (without transferring your personal information to the third party). See the Communication Preferences section below for more information.

Some Microsoft services are co-branded by Microsoft and another company (partner). If you register to or use such a service, both a Microsoft privacy statement and the partner's privacy statement may be displayed. If so, both Microsoft and the partner will receive information you provide such as on registration forms.

Microsoft occasionally hires other companies (vendor) to provide limited services on our behalf, such as handling the processing and delivery of mailings, providing customer support, hosting websites, processing transactions, or performing statistical analysis of our services. Those service providers will be permitted to obtain only the personal information they need to deliver the service. They are required to maintain the confidentiality of the information and are prohibited from using it for any other purpose than for delivering the service to Microsoft in accordance with Microsoft's instructions and policies. However, our vendors may use aggregate data for fraud detection to help improve their services. This helps them to more accurately detect fraudulent transactions. We may access or disclose information about you, including the content of your communications, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Microsoft or our customers, including the enforcement of our agreements or policies governing your use of the services; or (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Microsoft employees, customers or the public. We may also disclose personal information as part of a corporate transaction such as a merger or sale of assets.

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Accessing Your Personal Information

Some Microsoft services give you the ability to view or edit your personal information online. To help prevent your personal information from being viewed by others, you first will be required to sign in. The method(s) for accessing your personal information will depend on which sites or services you have used.

- **Microsoft.com** - You can access and update your profile on microsoft.com by visiting the [Microsoft.com Profile Center](#).
- **Microsoft Billing and Account Services** - If you have a Microsoft Billing account, you can add to or update your information at the [Microsoft Billing Web site](#) by clicking on the "Personal Information" or "Billing Information" links.
- **Microsoft Connect** - If you are a registered user of Microsoft Connect, you can access and edit your personal information by clicking [Manage Your Connect Profile](#) at the Microsoft Connect Web site.
- **Windows Live** - If you have used Windows Live services, you can update your profile information, change your password, view the unique ID associated with your credentials, or close certain accounts by visiting Windows Live [Account Services](#).
- **Windows Live Public Profile** - If you have created a public profile on Windows Live, you may also edit or delete information in your public profile by going to your [Windows Live profile](#).
- **Search Advertising** - If you buy search advertising through Microsoft Advertising, you can review and edit your personal information at the [Microsoft adCenter Web site](#).
- **Microsoft Partner Programs** - If you are registered with Microsoft Partner Programs, you can review and edit your profile by clicking [Manage Your Account](#) on the Partner Program Web site.
- **Xbox** - If you are a Xbox LIVE or Xbox.com user, you can view or edit your personal information, including billing and account information, privacy settings, online safety and data sharing preferences by accessing [My Xbox](#) on the Xbox 360 console or on the Xbox.com website. For account information select My Xbox, Accounts. For other personal information settings, select My Xbox, Profile then Online Safety Settings.
- **Zune** - If you have a Zune account or a Zune Pass subscription, you can view and edit your personal information at [Zune.net](#) (sign in, access your Zune tag then My Account or through the Zune software, (sign in, access your Zune tag, then select Zune.net profile)."

In case you cannot access personal data collected by Microsoft sites or services via the links above, these sites and services may provide you with alternative means of access to your data. In any case, you can contact Microsoft by using the [web form](#).

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Communication Preferences

You can stop the delivery of future promotional e-mail from Microsoft sites and services by following the specific instructions in the e-mail you receive.

Depending on the respective service, you may also have the option of proactively making choices about the receipt of promotional e-mail, telephone calls, and postal mail from particular Microsoft sites or services by visiting and signing into the following pages:

- Microsoft's [Promotional Communications Manager](#) allows you to update contact information, manage Microsoft-wide contact preferences, opt out of subscriptions, and choose whether to share your contact information with Microsoft partners. If you do not have a Microsoft account, you can manage your Microsoft email communication preferences by using this [web form](#).
- The [Microsoft.com Profile Center](#) allows you to choose whether you wish to receive marketing communications from Microsoft.com, to select whether Microsoft.com may share your contact information with selected third parties, and to subscribe or unsubscribe to newsletters about our products and services.

- The [MSN & Windows Live Communications Preferences](#) page allows you to choose whether you wish to receive marketing material from MSN or Windows Live. You may subscribe and unsubscribe to MSN Newsletters by going to the [MSN Newsletters website](#).
- If you have an Xbox.com or Xbox LIVE account, you can set your contact preferences and choose whether to share your contact information with Xbox partners by accessing [My Xbox](#) on the Xbox 360 console or on the Xbox.com website. To access these settings on the Xbox.com website, select My Xbox, Profile then Contact Preferences. On the Xbox 360 console, select My Xbox, Profile then Online Safety.
- If you are registered with Microsoft Partner Programs, you can set your contact preferences or choose to share your contact information with other Microsoft partners by clicking [Manage Your Account](#) on the Partner Program Web site.
- If you have a Zune account or a Zune Pass subscription, you can set your contact preferences and choose whether to share your contact information with Zune partners at [Zune.net](#) (sign in, access your Zune tag then My Account, Newsletter options or through the Zune software (sign in, access your Zune tag, then select Zune.net profile.)

In any case, you can inform Microsoft by using this web form about your wish to stop the delivery of future promotional e-mail. These choices do not apply to the display of online advertising: please refer to the section "Display of Advertising (Opt-out)" for information on this matter. Nor do they apply to the receipt of mandatory service communications that are considered part of certain Microsoft services, which you may receive periodically unless you cancel the service.

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Display of Advertising (Opt-Out)

Many of our Web sites and online services are supported by advertising.

Most of the online advertisements on Microsoft sites are displayed by Microsoft Advertising. When we display online advertisements to you, we will place one or more persistent cookies on your computer in order to recognize your computer each time we display an ad to you. Because we serve advertisements on our own websites as well as those of our advertising and publisher partners, we are able to compile information over time about the types of pages, content and ads you, or others who are using your computer, visited or viewed. This information is used for many purposes, for example, it helps us try to ensure that you do not see the same advertisements over and over again. We also use this information to help select and display targeted advertisements that we believe may be of interest to you.

You may opt-out of receiving targeted ads from Microsoft Advertising by visiting our [opt-out page](#). For more information about how Microsoft Advertising collects and uses information, please see the [Microsoft Advertising Privacy Supplement](#).

We also allow third-party ad companies, including other ad networks, to display advertisements on our sites. In some cases, these third parties may also place cookies on your computer. These companies currently include, but are not limited to: [24/7 Real Media](#), [aCerno, Inc.](#), [AdBlade](#), [AdConion](#), [AdFusion](#), [Advertising.com](#), [AppNexus](#), [Bane Media](#), [Brand.net](#), [CasaleMedia](#), [Collective Media](#), [Fox Interactive](#), [Interclick](#), [Millennial](#), [PrecisionClick](#), [ROI Media](#), [Social Media](#), [SpecificMedia](#), [TrafficMarketplace](#), [Tribal Fusion](#), [ValueClick](#), [Yahoo!](#), [YuMe](#), and [Zumobi](#). These companies may offer you a way to opt-out of ad targeting based on their cookies. You may find more information by clicking on the company names above and following the links to the Web sites of each company. Many of them are also members of the [Network Advertising Initiative](#) or the [Digital Advertising Alliance](#), which each provide a simple way to opt-out of ad targeting from participating companies.

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Security of Your Personal Information

Microsoft is committed to protecting the security of your personal information. We use a variety of security technologies and procedures to help protect your personal information from unauthorized access, use, or disclosure. For example, we store the personal information we collect on computer systems with limited access, which are located in controlled facilities. When we transmit highly confidential information (such as a credit card number or password) over the Internet, we protect it through the use of encryption, such as the Secure Socket Layer (SSL) protocol.

If a password is used to help protect your accounts and personal information, it is your responsibility to keep your password confidential. Do not share this information with anyone. If you are sharing a computer with anyone you should always log out before leaving a site or service to protect access to your information from subsequent users.

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Collection and Use of Children's Personal Information

Many Microsoft sites and services are intended for general audiences and do not knowingly collect any personal information from children. When a Microsoft site does collect age information, and users identify themselves as under 13, the site will either block such users from providing personal information, or will seek to obtain consent from parents for the collection, use and sharing of their children's personal information. We will not knowingly ask children under the age of 13 to provide more information than is reasonably necessary to provide our services.

Please note that if you grant consent for your child to use Microsoft services, this will include such general audience communication services as e-mail, instant messaging, and online groups, and your child will be able to communicate with, and disclose personal information to, other users of all ages. Parents can change or revoke the consent choices previously made, and review, edit or request the deletion of their children's personal information. For example, on MSN and Windows Live, parents can visit Account Services, and click on "Permission for kids." If we change this privacy statement in a way that expands the collection, use or disclosure of children's personal information to which a parent has previously consented, the parent will be notified and we will be required to obtain the parent's additional consent.

If you have an MSN Premium, MSN Plus, or MSN 9 Dial-Up account, and use MSN Client software version 9.5 or below, you can choose to set up MSN Parental Controls for the other users of that account. Please read the supplemental privacy information for [MSN](#) for further information.

We encourage you to talk with your children about communicating with strangers and disclosing personal information online. You and your child can visit our [online safety resources](#) for additional information about using the Internet safely.

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Use of Cookies

Most Microsoft Web sites use "cookies," which are small text files placed on your hard disk by a Web server. Cookies contain information that can later be read by a Web server in the domain that issued the cookie to you.

One of the primary purposes of cookies is to store your preferences and other information on your computer in order to save you time by eliminating the need to repeatedly enter the same information and to display your personalized content and targeted advertising on your later visits to these sites. Microsoft Web sites also use cookies as described in the [Display of Advertising](#) sections of this privacy statement.

When you sign in to a site using your Microsoft account, we store your unique ID number, and the time you signed in, in an encrypted cookie on your hard disk. This cookie allows you to move from page to page at the site without having to sign in again on each page. When you sign out, these cookies are deleted from your computer. We also use cookies to improve the sign in experience. For example, your e-mail address may be stored in a cookie that will remain on your computer after you sign out. This cookie allows your e-mail address to be pre-populated, so that you will only need to type your password the next time you sign in. If you are using a public computer or do not otherwise

want this information to be stored, you can select the appropriate radio button on the sign-in page, and this cookie will not be used.

You have the ability to accept or decline cookies. Most Web browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies if you prefer. If you choose to decline cookies, you may not be able to sign in or use other interactive features of Microsoft sites and services that depend on cookies, and some advertising preferences that are dependent on cookies may not be able to be respected.

If you choose to accept cookies, you also have the ability to later delete cookies that you have accepted. For example, in Internet Explorer 8, you can delete cookies by selecting "Tools", "Delete browsing history". Then select the control box "Cookies" and click the "Delete" button. If you choose to delete cookies, any settings and preferences controlled by those cookies, including advertising preferences, will be deleted and may need to be recreated.

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Use of Web Beacons

Microsoft Web pages may contain electronic images known as Web beacons - sometimes called single-pixel gifs - that may be used to assist in delivering cookies on our sites and allow us to count users who have visited those pages and to deliver co-branded services. We may include Web beacons in promotional e-mail messages or our newsletters in order to determine whether messages have been opened and acted upon.

Microsoft may also employ Web beacons from third parties in order to help us compile aggregated statistics regarding the effectiveness of our promotional campaigns or other operations of our sites. We prohibit Web beacons on our sites from being used by third parties to collect or access your personal information.

Finally, we may work with other companies that advertise on Microsoft sites to place Web beacons on their sites in order to allow us to develop statistics on how often clicking on an advertisement on a Microsoft site results in a purchase or other action on the advertiser's site.

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Controlling Unsolicited E-mail ("Spam")

Microsoft is concerned about controlling unsolicited commercial e-mail, or "spam." Microsoft has a strict [Anti-Spam Policy](#) prohibiting the use of a Windows Live Hotmail or other Microsoft-provided e-mail account to send spam. Microsoft will not sell, lease or rent its e-mail subscriber lists to third parties. . While Microsoft continues to actively review and implement new technology, such as expanded filtering features, there is no technology that will totally prevent the sending and receiving of unsolicited e-mail. Using junk e-mail tools and being cautious about the sharing of your e-mail address while online will help reduce the amount of unsolicited e-mail you receive.

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TRUSTe Certification

Microsoft has been awarded TRUSTe's Privacy Seal signifying that this privacy statement and our practices have been reviewed by TRUSTe for compliance with TRUSTe's program requirements including transparency, accountability and choice regarding the collection and use of your personal information. The TRUSTe program does not cover information that may be collected through downloadable software. TRUSTe's mission, as an independent third party, is to accelerate online trust among consumers and organizations globally through its leading privacy trustmark and innovative trust solutions.

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Enforcement of This Privacy Statement

If you have questions regarding this statement, you should first contact us by using our [Web form](#). If you do not receive acknowledgement of your inquiry or your inquiry has not been satisfactorily addressed, you should then contact TRUSTe at http://www.truste.org/consumers/watchdog_complaint.php. TRUSTe will serve as a liaison with Microsoft to resolve your concerns.

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Changes to This Privacy Statement

We will occasionally update this privacy statement to reflect changes in our services and customer feedback. When we post changes to this Statement, we will revise the "last updated" date at the top of this statement. If there are material changes to this statement or in how Microsoft will use your personal information, we will notify you either by prominently posting a notice of such changes prior to implementing the change or by directly sending you a notification. We encourage you to periodically review this statement to be informed of how Microsoft is protecting your information.

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How to Contact Us

For more information about our privacy practices, go to the full [Microsoft Online Privacy Statement](#).

- If you have a technical or general support question, please visit <http://support.microsoft.com/> to learn more about Microsoft Support offerings.
- If you suspect your Hotmail/Live account has been hacked or taken over, please visit [Live Help](#).
- If you have a Hotmail/Live password question, please visit [Live Help](#).
- For general Microsoft Privacy issues, please contact us by using our [Web form](#).

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To find the Microsoft subsidiary in your country or region, see <http://www.microsoft.com/worldwide/>.

[Anti-Spam Policy](#)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHEVRON CORPORATION,

Plaintiff,

-against-

STEVEN DONZIGER, et al.,

Defendants.

Case No. 1:12-MC-65 GLS/CFH

**DECLARATION OF ALEXANDER T. MARX ON BEHALF OF CHEVRON
CORPORATION IN OPPOSITION TO THE NON-PARTY MOVANTS' MOTION TO
QUASH SUBPOENAS TO MICROSOFT CORPORATION**

I, Alexander T. Marx, declare:

1. I am an attorney duly admitted to the State Bar of New York and an associate at the law firm of Gibson, Dunn & Crutcher LLP, attorneys of record for Chevron Corporation in the above-captioned action. I am over the age of eighteen years and am not a party to this action. I have personal knowledge of the facts set forth in this declaration. Each of the exhibits identified below is a true and correct copy of the respective document as it is maintained in the files of Gibson, Dunn & Crutcher LLP in the normal course of business.

2. Attached hereto as "Exhibit 1" is a true and correct copy of an email exchange dated May 17, 2010 among Lago Agrio Plaintiffs' U.S. lawyers, including S. Donziger to A. Wilson, I. Maazel, and J. Abady, with the subject "Re: Colorado Disclosures," produced by S. Donziger and bearing Bates number DONZ00031315.

3. Attached hereto as "Exhibit 2" is a true and correct copy of the subpoena to Microsoft Corporation issued by Chevron Corporation, dated September 10, 2012.

4. Attached hereto as "Exhibit 3" is a true and correct copy of an email from S. Tegel to S. Donziger and others dated April 22, 2008, with the subject "Re: wsj letter," produced by S. Donziger and bearing Bates number DONZ-HDD-0171047.

5. Attached hereto as "Exhibit 4" is a true and correct copy of an email from S. Tegel to S. Donziger dated April 22, 2008, with the subject "IBD Draft," produced by S. Donziger and bearing Bates number DONZ-HDD-0170617.

6. Attached hereto as "Exhibit 5" is a true and correct copy of an email from S. Tegel to S. Donziger dated May 28, 2008, with the subject "release pasted only (in case other version is slow in arriving)," produced by S. Donziger and bearing Bates number DONZ00128918.

7. Attached hereto as "Exhibit 6" is a true and correct copy of an email from P. Fajardo to M. Yopez, S. Donziger and others dated August 5, 2008, with the subject "CITA," produced by S. Donziger and bearing Bates number DONZ-HDD-0037895, and a certified translation thereof.

8. Attached hereto as "Exhibit 7" is a true and correct copy of an email from P. Fajardo to M. Yopez, S. Donziger and others, with the subject "Re: Corte suprema," produced by S. Donziger and bearing Bates number DONZ00047745.

9. Attached hereto as "Exhibit 8" is a true and correct copy of an email from S. Donziger to M. Yopez dated February 14, 2007, with the subject "Re: Tareas," produced by S. Donziger and bearing Bates number DONZ-HDD-0100756, and a certified translation thereof.

10. Attached hereto as "Exhibit 9" is a true and correct copy of an email from L. de Heredia to S. Donziger dated October 16, 2007, with the subject "Volunteers are here," produced by S. Donziger and bearing Bates number DONZ-HDD-0131188.

14. Attached hereto as "Exhibit 10" are true and correct copies of three subpoenas on Yahoo! Inc. by Friedman, Kaplan, Seiler & Adelman LLP, counsel for S. Donziger, respectively dated November 29, 2010, December 9, 2010, and January 3, 2011.

15. Attached hereto as "Exhibit 11" is a true and correct copy of an email from A. Guerra to S. Donziger dated September 5, 2010, with the subject "Saludos de Quito," produced by S. Donziger and bearing Bates number DONZ00059141, and a certified translation thereof.

16. Attached hereto as "Exhibit 12" is a true and correct copy of a web page displaying the results of an Internet search for the term "Simeon Tegel," conducted using the Google search engine on January 14, 2013.

17. Attached hereto as "Exhibit 13" is a true and correct copy of an email from S. Donziger to M. Yopez and others dated September 7, 2009, with the subject "note Charles James menciona Callejas abajo en la entrevista," produced by S. Donziger and bearing Bates number DONZ00066778.

18. Attached hereto as "Exhibit 14" is a true and correct copy of Microsoft's Online Privacy Statement, downloaded from Internet on January 9, 2013.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 15 day of January, 2013, in Los Angeles, California.

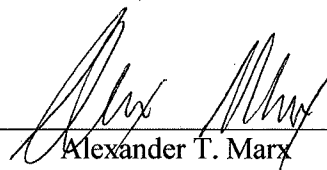

Alexander T. Marx

EXHIBIT 1

From: Steven Donziger [sdonziger@donzigerandassociates.com]
Sent: Monday, May 17, 2010 12:21 PM
To: Andrew Wilson
Cc: Iann M. Maazel; Jonathan S. Abady; Westenberger, Eric; jhorowitz; Daleo, Eric; Yennock, Edward
Subject: Re: Colorado Disclosures

Should we talk about this?

Seems we have a tension b/w the strategy as outlined by Jim (fight hard on all fronts all the time and concede nothing, buy as much time as possible) and Hegerty's expectation as outlined by Jay in his email of last night that something should be turned over.

It just makes my skin crawl to give them anything... particularly in light of Jay's Rule 60 motion which as I understand is not in fact dead, at least not yet.

How to resolve this issue?

On Mon, May 17, 2010 at 12:00 PM, Andrew Wilson <awilson@ecbalaw.com> wrote:

We need to decide now whether we are going to object to the disclosure of public documents that are responsive to the Stratus subpoenas. I am inclined to allow those to be produced - but if others disagree, we need to write around this issue in the reply brief.

Here is the complete section below ---

* * *

The second category of documents discussed at the April 27 Hearing were those materials responsive to the Stratus Subpoenas and disclosed to third parties. While such documents are subject to production - the scope of that production is narrower than sought by Chevron.

Chevron should be limited to the "limited" scope of its § 1782 application. See Pl. Br. 26-27. While responsive documents concerning the Cabrera Reports shared with non-privileged third parties are subject to disclosure, there is no basis for a broad inquiry into all of the Consulting Experts' contacts with media that touch on the present case. Chevron's argument that limited public appearances by the Consulting Experts, publication of select work performed by the consulting experts, and/or public discussion of the Consulting Experts' work should operate as a global waiver of all protections otherwise adhering to the Consulting Experts' work product is contrary to the weight of authority protecting consultants.

As a general matter, the publication of the expert reports "does not waive the protection for the underlying drafts and materials because the work-product doctrine exists not to protect a 'confidential relationship,' but rather 'to promote the adversary system by safeguarding the fruits of an attorney's trial preparations from the discovery attempts of an opponent.'" In re Vioxx Products Liability Litigation, MDL No. 1657, 2007 U.S. Dist. LEXIS 23164, at *14 (E.D. La. March 5, 2007) (citing *Shields v. Sturm, Ruger & Co.*, 864 F.2d 379, 382 (5th Cir. 1989)); see also In re Trasylol Products Liability Litigation, MDL No. 08-1928, 2009 U.S. Dist. LEXIS 85553, at *87 (S.D. Fla. Aug. 12, 2009). In Vioxx, due to public criticism and shareholder demands, Merck established a committee to investigate the conduct of its senior management in the creation of the drug Vioxx. Id. at *3. The committee's investigation culminated in the public release of an investigative report. Id. at *3-4. Plaintiffs in the product liability suit ultimately sought discovery of all underlying

documents relating to the “creation, preparation, and publication” of the report. Id. at *4. Just as Chevron asserts in this case, the Vioxx plaintiffs argued that, under the “fairness doctrine,” publication of the final report waived any protection adhering to the underlying material. See id. at *6-15. There, as here, production was not justified.

Any work that the Consulting Experts performed in the realm of public relations is irrelevant to the Lago Agrio Litigation, and outside the scope of the subpoenas, for two reasons. First, while it is understandable that Chevron would like to take discovery providing a window into Plaintiffs’ public relations strategy, Plaintiffs’ public relations matters are not probative as to any issue with respect to the Lago Agrio Litigation itself (or the Bilateral Investment Treaty Arbitration).

Second, even if Stratus’s public relations work were somehow theoretically relevant and discoverable, no fewer than 23 of the 25 exhibits attached to Chevron’s “Stratus Publicity RJN” (Dkt. 120) post-date Cabrera Report. Insofar as the instant Section 1782 proceeding is purportedly aimed at determining the extent to which Plaintiffs influenced Mr. Cabrera’s Report, whatever services Stratus provided to Plaintiffs after the release of the Cabrera Report are by definition irrelevant and outside the scope of the subpoenas. Chevron’s almost exclusive focus on statements made after the Cabrera Report betrays its alleged premise for this discovery proceeding: Chevron’s efforts are not really about proving “fraud,” but rather, are simply about obtaining a free shot at the confidential, undisclosed insights of Plaintiffs’ litigation team. None of the materials that post-date the Cabrera report can have anything to do with the materials that were “considered” by Cabrera.

Chevron cannot seek documents given to third parties except to the extent responsive to the subpoenas.

O. Andrew F. Wilson
Emery Celli Brinckerhoff & Abady LLP
75 Rockefeller Plaza, 20th Floor
New York, New York 10019
Tel: 212-763-5000
Fax: 212-763-5001

The pages accompanying this email transmission contain information from the law firm of Emery Celli Brinckerhoff & Abady LLP which is confidential or privileged. The information is intended to be for the use of the individual or entity named on this email. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this e-mail in error please notify us by telephone immediately so that we can arrange for the retrieval of the email at no cost to you.

--
Steven Donziger
[REDACTED]
212-409-8628 (fax)
[REDACTED]

Steven R. Donziger
Law Offices of Steven R. Donziger, P.C.
[REDACTED]
Email: sdonziger@gmail.com

EXHIBIT 2

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of New York

CHEVRON CORP.

Plaintiff

v.

STEVEN DONZIGER, et al.,

Defendant

Civil Action No. 11 Civ. 0691 (LAK)

(If the action is pending in another district, state where:
Southern District of New York)SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Microsoft Registered Agent, Corporation Service Company, 80 State Street, Albany, NY 12207

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Place: GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193 c/o Alex Marx

Date and Time:

10/08/2012 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 09/10/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Chevron Corporation, who issues or requests this subpoena, are:

Rachel Brook, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193
Telephone: (212)351-2609, rbrook@gibsondunn.com

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 11 Civ. 0691 (LAK)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE A

DEFINITIONS

1. “DOCUMENT” has the full meaning ascribed to it in Rule 34 of the Federal Rules of Civil Procedure and Rule 26.3 of the Local Rules for the United States District Court for the Southern District of New York and shall include all originals of any nature whatsoever and all non-identical copies thereof, whether different from the originals by reason of any notation made on such copies or otherwise, including but not limited to all writings in any form, notes, memoranda, manuals, reports, records, correspondence, drawings, graphs, charts, photographs, phone records, data compilations of whatever nature (including those from which information can be obtained or translated if necessary), audio tapes, electronic mail messages, and electronic data (including any exchange of information between computers, all information stored in an electronic form or computer database, and all forms and formats of storage).

2. “RELATED TO,” “RELATING TO,” “IN RELATION TO,” “REGARDING” and “CONCERNING” means in relation to, related to, consisting of, referring to, reflecting, concerning, discussing, evidencing, commenting on, describing, constituting, supporting, contradicting or having any logical or factual connection with the matter identified, in whole or in part.

INSTRUCTIONS

1. These requests are governed by Rules 26 and 45 of the Federal Rules of Civil Procedure and any applicable law and Local Rule.

2. You are requested to produce all DOCUMENTS and things described below at Gibson, Dunn & Crutcher, LLP, c/o Alex Marx, 200 Park Avenue, New York, NY 10166-0193, on or before October 8, 2012.

3. In answering and responding to these document requests, you are requested to produce all DOCUMENTS that are in your possession, custody, or control, or that are in the possession, custody, or control of your principals, agents, employees, attorneys, representatives, insurers, and any other persons or entities, acting on your behalf.

4. If any of the information or DOCUMENTS supplied in response to these document requests does not come from your records, please specify the source of the DOCUMENTS.

5. If you refuse to produce any requested DOCUMENT under a claim of attorney-client privilege, work product privilege, or any other privilege or protection, it is requested that you submit for each DOCUMENT withheld a written statement that: specifies the privilege or other asserted basis for withholding the DOCUMENT; summarizes the substance of the DOCUMENT; identifies the person or entity who prepared the DOCUMENT and any persons or entities to which the DOCUMENT was sent or disclosed; and specifies the dates on which the DOCUMENT was prepared, transmitted, or received.

6. The time period covered by these document requests runs from 2003 to the present. This is a continuing request. Any DOCUMENT obtained or located after the date of production that would have been produced had it been available or had its existence been known at that time should be produced immediately.

7. If an objection is made to any numbered request, or any subpart thereof, state with specificity all grounds for the objection.

8. All responsive and potentially responsive documents and tangible things should be preserved and maintained pending the outcome of this matter.

DOCUMENTS REQUESTED

All DOCUMENTS RELATED TO (A) the identity of the user of the following email addresses, including but not limited to DOCUMENTS that provide all names, mailing addresses, phone numbers, billing information, date of account creation, account information and all other identifying information associated with the email address under any and all names, aliases, identities or designations RELATED TO the email address; and (B) the usage of the following email addresses, including but not limited to DOCUMENTS that provide IP logs, IP address information at time of registration and subsequent usage, computer usage logs, or other means of recording information concerning the email or Internet usage of the email address.

1. Examen_pericial@hotmail.com
2. muerteenlaselva@hotmail.com
3. ingracabrerav@hotmail.com
4. rcabrerav@hotmail.com
5. cristobalvillao@hotmail.com
6. luisvillacreces@hotmail.com
7. julprieto@hotmail.com
8. juanpasaenz@hotmail.com
9. gaer69chzpr@hotmail.com
10. donaldmoncayo@hotmail.com
11. alex_anchundia2007@hotmail.com
12. erikatorres_19@hotmail.com
13. gabrielitaep@hotmail.com
14. hannagoanna@hotmail.com

15. duruti@hotmail.com
16. aulestiajuan@hotmail.com
17. maryelji20@hotmail.com
18. mey_1802@hotmail.com
19. monica_pareja@hotmail.com
20. pirancha@hotmail.com
21. nick_aussie@hotmail.com
22. renatog85@hotmail.com
23. selvaviva2004@hotmail.com
24. simeontegel@hotmail.com
25. patriciogarcia_2009@hotmail.com
26. criscadena@hotmail.com
27. albertoguerrab@hotmail.com
28. faisal_baki@hotmail.com
29. Hjploro@hotmail.com
30. osimonc@hotmail.com

EXHIBIT 3

From: Simeon Tegel [tegelsimeon@gmail.com] on behalf of Simeon Tegel [simeon@amazonwatch.org]
Sent: Tuesday, April 22, 2008 1:19 PM
To: Steven Donziger
Cc: Kevin Koenig; Atossa Atossa Soltani; Mitch Anderson; Paul Paz y Mino
Subject: Re: wsj letter

Atossa just sent this text to WSJ letters page, with a note that because they named us and had significant factual errors, we very much hope that they will publish, and that they should keep us informed:

Your editorial "Banana Republic and Friends" tries to undermine the credibility of Amazon Watch and the legal case against Chevron in Ecuador. Let's see how accurate your facts are. The so-called "release" cited in your editorial does not apply to private claims of the type in the Ecuador litigation. Chevron's "remediation", which you laud, was a sham as confirmed by laboratory samples provided by a court-appointed expert and by Chevron itself. Pablo Fajardo, the lawyer you scorn, works under death threats and has been recognized worldwide for his personal courage. Chevron was the sole operator of the concession and as such is entirely responsible for building a system that was designed to pollute. The dismissed San Francisco case against Chevron has no connection to the Ecuador matter and involved entirely different legal claims. Ecuador's so-called "kangaroo courts" have been praised repeatedly by Chevron as transparent and impartial to avoid going to trial in the U.S. Now that the evidence is in, Chevron and the Journal suddenly can stand neither Ecuador's courts nor these basic facts. It seems the misinformation is in your editorial, not on our website.

Atossa Soltani
Executive Director
Amazon Watch

Simeon Tegel
Director of Communications
Amazon Watch
One Hallidie Plaza, Suite 402
San Francisco, CA 94102
Tel: + 415-487-9600
Fax: + 415-487-9612
simeon@amazonwatch.org
www.amazonwatch.org

On Apr 22, 2008, at 7:48 AM, Steven Donziger wrote:

I would send the letter in now or you will be shut out. Deal with larger issues later -- time is of the essence. I wouldn't lengthen it or it will not get in probably.

SRD

On 4/22/08, **Kevin Koenig** <kevinkoenig@mindspring.com> wrote:
Steven --

I think this is a great letter. I like the tone, that its concise, and deals only with the WSJ's inaccurate facts. But it's infuriating that the WSJ continues to just swallow CVX spin, and it's hard to unpack it all in the small amount of space of a LTE. I absolutely think a board meeting is necessary. They might not write something as a direct response, but they need to get the facts straight. I wonder whether bringing someone like Pat Doherty or someone from NYPERS would be helpful.

As far as the letter goes, it might muddy it a bit, but I wonder whether we want to respond beyond their misinformation, and at least lay out:

- + that PE was the sole operator, and as such violated both Ecuadorian, U.S., and intl norms. PE is no friend to the environment, but that doesn't negate CVX responsibility.
- + that threats to Pablo and Luis are deemed grave enough for OAS-IAHCR precautionary measures in an attempt to ensure their safety
- + explicitly say that Chevron praised the transparency and impartiality of Ecuador courts FOR TEN YEARS and their petition for jurisdiction in Ecuador was granted.

Either way, lets get this in today.
Thanks,
Kevin

Original Message:

From: Steven Donziger sdonziger@gmail.com
Date: Mon, 21 Apr 2008 19:31:01 -0400
To: simeon@amazonwatch.org, mitch@amazonwatch.org, atossa@amazonwatch.org, kevin@amazonwatch.org, paz@amazonwatch.org
Subject: Try this for ltr to WSJ

To the editor:

Your editorial "Banana Republic and Friends" tries to undermine the credibility of the legal case against Chevron in Ecuador by claiming Amazon Watch offers "one stop shopping for misinformation" in support of the plaintiffs. Let's see how accurate your facts are. The so-called "release" cited in your editorial does not apply to private claims of the type in the Ecuador litigation. Chevron's "remediation" that you laud was a sham as confirmed by laboratory samples provided by a court-appointed expert and by Chevron itself. Pablo Fajardo, the lawyer you scorn, works under death threats and has been recognized worldwide for his personal courage. The San Francisco case against Chevron that was dismissed has no connection to the Ecuador matter and involved entirely different legal claims. Ecuador's so-called "kangaroo courts" have been praised repeatedly by Chevron as transparent and impartial to avoid trial in the U.S.

Now that the evidence is in, Chevron and the Journal suddenly can't stand Ecuador's courts nor these basic facts. Sounds to us like the misinformation is in your editorial, not on our website.

Atossa Soltani

On 4/21/08, Simeon Tegel <simeon@amazonwatch.org> wrote:

>
> Primero lo primero, ie WSJ.
>
>
> Simeon Tegel
> Director of Communications
> Amazon Watch
> One Hallidie Plaza, Suite 402
> San Francisco, CA 94102
> Tel: + 415-487-9600
> Fax: + 415-487-9612

> simeon@amazonwatch.org
 > www.amazonwatch.org
 >
 >
 > On Apr 21, 2008, at 4:04 PM, Steven Donziger wrote:
 >
 > you mean ltr to WSJ or IBD?
 >
 > On 4/21/08, Simeon Tegel <simeon@amazonwatch.org> wrote:
 > >
 > > Could you let us know as soon as you hear from WSJ re your op-ed. If
 > > they don't publish, we will hit them up separately; they have named us
 > > afterall!
 > >
 > > Separately, I will draft a Letter to the Editor on Tue (unless you have
 > > time to do that for us?); any suggestions for specific points to include
 > > welcomed. Re ed board meeting: yes, agreed. But we can leave that request
 > > until later in the week, especially if they give us little/no right of
 > > reply.
 > >
 > >
 > > Simeon
 > >
 > >
 > >
 > > Simeon Tegel
 > > Director of Communications
 > > Amazon Watch
 > > One Hallidie Plaza, Suite 402
 > > San Francisco, CA 94102
 > > Tel: + 415-487-9600
 > > Fax: + 415-487-9612
 > > simeon@amazonwatch.org
 > > www.amazonwatch.org
 > >
 > >
 > > On Apr 21, 2008, at 11:45 AM, Steven Donziger wrote:
 > >
 > > did u redline this?
 > >
 > > On 4/21/08, Simeon Tegel <simeon@amazonwatch.org> wrote:
 > > >
 > > > See attached. I lost 80 words but then added 30 or so with the UN and
 > > > IACHR reference. Also changed intro to simplify syntax, although I can see
 > > > why you wanted it phrased the way you originally had, and made other minor
 > > > stylistic suggestions. TC on.
 > > >
 > > > Simeon
 > > >
 > > >
 > > >
 > > >
 > > >
 > > >
 > > >
 > > >
 > > > Simeon Tegel
 > > > Director of Communications
 > > > Amazon Watch
 > > > One Hallidie Plaza, Suite 402
 > > > San Francisco, CA 94102
 > > > Tel: + 415-487-9600
 > > > Fax: + 415-487-9612
 > > > simeon@amazonwatch.org
 > > > www.amazonwatch.org
 > > >
 > > >
 > > > On Apr 21, 2008, at 9:37 AM, Steven Donziger wrote:
 > > >
 > > > yes, lop some shit off if u can
 > > >
 > > > tks
 > > >

>>>
>>> On 4/21/08, Simeon Tegel <simeon@amazonwatch.org> wrote:
>>>
>>>> Steven,
>>>>
>>>>
>>>> The WSJ op-ed looks good to me, with a couple of minor suggestions:
>>>>
>>>>
>>>> 1. Maybe add the words "and operated" to the penultimate par, after
>>>> "designed and built"?
>>>>
>>>>
>>>> 2. In the par two thirds of the way down, about the death threats,
>>>> I'd add in a line about the public interventions from the UN and
>>>> Inter-American Commission on Human Rights.
>>>>
>>>>
>>>> No typos that I could find, although I might be able to lop off a
>>>> hundred redundant words or so, if you wanted me to do that?
>>>>
>>>>
>>>> Simeon
>>>>
>>>>
>>>>
>>>> Simeon Tegel
>>>> Director of Communications
>>>> Amazon Watch
>>>> One Hallidie Plaza, Suite 402
>>>> San Francisco, CA 94102
>>>> Tel: + 415-487-9600
>>>> Fax: + 415-487-9612
>>>> simeon@amazonwatch.org
>>>> www.amazonwatch.org
>>>>
>>>>
>>>> On Apr 20, 2008, at 3:11 PM, Steven Donziger wrote:
>>>>
>>>> Editorial for Wall Street Journal/Donziger
>>>>
>>>>> That an independent, court-appointed expert recently found Chevron
>>>>> faces a judgment of up to \$16 billion in Ecuador for causing environmental
>>>>> damage in the Amazon rainforest should come as little surprise to anyone
>>>>> familiar with the underlying facts on which the claim is based. What
>>>>> is odd is how the Wall Street Journal ignores these facts in praising the
>>>>> pledge of Chevron General Counsel Charles James "not to succumb to
>>>>> extortion" and in wondering "whose interests are served" by the legal case.
>>>>> In fact, Mr. James and his employer have for years tried to
>>>>> undermine the rule of law in the court systems of both the U.S. and Ecuador
>>>>> to avoid liability for oil-related contamination linked to Chevron's
>>>>> production practices.
>>>>>
>>>>> Chevron (via its predecessor company Texaco) was the exclusive
>>>>> operator of a large concession in Ecuador's Amazon from 1964 to 1990.
>>>>> To lower production costs, Chevron discharged roughly 18 billion
>>>>> gallons of water of formation -- highly saline and filled with carcinogens
>>>>> such as benzene -- directly into Amazon waterways in an area where six
>>>>> indigenous groups had prospered for centuries. The company also
>>>>> carved about 900 open-air and unlined waste pits out of the jungle floor and
>>>>> filled them with the waste byproducts of drilling, which include oil sludge
>>>>> and heavy metals such as chromium, lead, and zinc. The grotesque
>>>>> forms of the waste pits, some the size of a football field, can be still be
>>>>> seen in the area where they leech their contents into soils and groundwater.
>>>>>
>>>>>
>>>>> These systemic practices were bad enough. But a 1989 government
>>>>> study also found that Chevron was spilling 20,000 gallons of oil *per
>>>>> week* in the region, or about 16 million gallons over the course of
>>>>> its operation.
>>>>>
>>>>> Using unlined pits and dumping formation waters were considered
>>>>> outdated in the U.S. by most people in the oil industry in the 1940s.
>>>>> The Texas Railroad Commission banned unlined pits in 1939. Even the

>>>> industry-backed American Petroleum Institute in the early 1960s was warning
 >>>> oil companies to re-inject the toxic water deep into underground wells.
 >>>> The bottom line is that Chevron decided to employ practices in
 >>>> Ecuador that it would never use in the United States.

>>>>
 >>>> Today, the pristine rainforest ecosystem where Chevron built and
 >>>> operated 356 wells and 22 production stations – covering an area roughly the
 >>>> size of Rhode Island -- suffers from what experts fear could be one of the
 >>>> worst oil-related contaminations on the planet. Several
 >>>> peer-reviewed health evaluations have found skyrocketing rates of
 >>>> spontaneous miscarriages and cancer in the provinces of Sucumbios and
 >>>> Orellana, including childhood leukemia levels four times higher than in
 >>>> other parts of Ecuador. Thousands of people are drinking water and
 >>>> bathing in rivers laced with toxins multiple times daily. Soils and
 >>>> groundwater around and near the waste pits contain hydrocarbons that are
 >>>> hundreds, even thousands, of times over norms in the U.S. and Ecuador.

>>>>
 >>>>
 >>>> Given this dire situation, what is surprising is how Mr. James and
 >>>> his employer have been unable to get out ahead of the problem. The
 >>>> court-appointed special master who Mr. James has attacked as "biased" was
 >>>> actually somebody whose salary had been paid in part by Chevron in an
 >>>> earlier part of the case, when the company did not object to his
 >>>> qualifications (he worked with 14 other technical specialists on the latest
 >>>> report).

>>>>
 >>>> The Journal also falls prey to Chevron's spin over its so-called \$40
 >>>> million "remediation" and subsequent legal "release". This all
 >>>> sounds like a neat solution for Chevron except for one glaring defect:
 >>>> the release has plain language that specifically carves out private
 >>>> claims of the type currently being litigated. Our clients are not
 >>>> parties to that release, and therefore are not covered by it.

>>>>
 >>>> This still leaves open the question of the level of responsibility
 >>>> of PetroEcuador, the state oil company that inherited Chevron's operation in
 >>>> 1992. The lawsuit asserts that Chevron is 100% responsible not only
 >>>> for the contamination it created during the years it operated, but also for
 >>>> the contamination that has occurred by its successor company using the same
 >>>> negligent system that Chevron designed in violation of legal standards.
 >>>> For Chevron to try to blame the entire problem on a separate oil
 >>>> company using the system it designed and built is nothing more than a folly
 >>>> to distract shareholders from the extent of its potential liability, which
 >>>> it has never reported in its public filings.

>>>>
 >>>> The trial in Ecuador reflects a genuine legal dispute that is being
 >>>> hotly litigated by both parties. Chevron has vigorously defended
 >>>> itself, submitted more than 200,000 pages of documentary evidence and 52,000
 >>>> chemical sampling results. Despite Chevron's strategy of delay, a
 >>>> judgment should be forthcoming in several months assuming the court
 >>>> exercises its inherent powers to move the matter along at a reasonable pace.
 >>>> The result is not foreordained. Chevron should let the process
 >>>> finish instead of attacking the rule of law in a transparent attempt to
 >>>> accomplish its desired result through extrajudicial pressure.

>>>>
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 >>>> #

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>>>> Steven Donziger

>>>> [REDACTED]
 >>>> 212-570-9944 (fax)

>>>> [REDACTED]
 >>>>

>>>> Steven R. Donziger
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Kevin Koenig
Northern Amazon Program Coordinator
Amazon Watch

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Quito Office: 593-2-333-1348

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EXHIBIT 4

From: Simeon Tegel [tegelsimeon@gmail.com] on behalf of Simeon Tegel [simeon@amazonwatch.org]
Sent: Tuesday, April 22, 2008 6:00 PM
To: Steven Donziger
Subject: IBD draft

I was going to send the below to IBD, mentioning that they had named us. Short but all I have time for right now. Do you want to add anything?

Your editorial (“Ecuador Shakedown”, April 17) reads as though written by Chevron’s publication relations department, twisting facts and ignoring Chevron’s own admission that it dumped 18 billion gallons of toxic wastewater into the Ecuadorian Amazon.

You assert the “suit was laughed out of court” in the US. In fact, the judge agreed merely that Ecuador was a more appropriate jurisdiction than the US, conditioning his decision on Chevron’s acceptance that it abide by the outcome of the Ecuadorian court system. You describe Richard Cabrera as an “activist” when, in truth, he is a qualified geologist appointed by the judge in the *Aguinda vs. Texaco* litigation rather than either of the parties in the case.

The facts of the case are simple: Chevron designed, implemented and operated sub-standard technology during its three decades in Ecuador, before fleeing the country. As a result, as Chevron itself does not deny, the operation dumped 18 billion gallons of toxic wastewater directly into Amazonian waterways. Now, as peer-reviewed epidemiology studies show, cancer rates in the region are skyrocketing and Chevron refuses to help, effectively rendering meaningless its touted human rights and environmental policies.

By ignoring these key points, and unquestioningly accepting Chevron’s one-eyed version of events, the Investor’s Business Daily has called its own editorial independence and integrity into question.

Sincerely,
Atossa Soltani
Executive Director
Amazon Watch

Simeon Tegel
Director of Communications
Amazon Watch
One Hallidie Plaza, Suite 402
San Francisco, CA 94102
Tel: + 415-487-9600
Fax: + 415-487-9612
simeon@amazonwatch.org
www.amazonwatch.org

EXHIBIT 5

From: Simeon Tegel [simeon@amazonwatch.org]
Sent: Wednesday, May 28, 2008 2:15 PM
To: Steven Donziger
Subject: release pasted only (in case other version is slow in arriving)

FOR IMMEDIATE RELEASE: May 28, 2008

CONTACTS: Simeon Tegel: 510-962-0195; Mitch Anderson: 415-342-4783;

“Systemic” Human Rights Abuses Dominate Chevron Annual General Meeting

Chevron’s Victims from Burma, Ecuador and Nigeria Travel Around the World to Confront CEO David O’Reilly at Shareholder Meeting

B-Roll and photos of Ecuador pollution available upon request.

San Ramon — In a dramatic face-to-face showdown at Chevron’s annual general meeting, victims of the company’s grave human rights abuses from three continents today told shareholders and senior executives that the oil major must make amends to the communities whose lives and lands it has ruined

Community representatives from Burma, Ecuador and Nigeria participated in the meeting as proxy shareholders, calling on Chevron CEO David O’Reilly to stop hiding behind lawyers and corporate greenwashing and acknowledge and their suffering.

In Burma, revenue from a Chevron pipeline props up the repressive military dictatorship while pipeline security forces have been accused of murder, rape and forced labor. In Ecuador, the company is facing a \$16 billion damages payout for dumping 18 billion gallons of toxic wastewater and leaving local communities to suffer a wave of cancers. In Nigeria, Chevron is accused of massive environmental contamination and having soldiers shoot and kill peaceful protestors.

Mr. O’Reilly’s response today was to label one Nigerian shooting survivor a “criminal” and to switch off the microphone of an Ecuadorian woman who lives on a site polluted and supposedly “remediated” by Texaco (now part of Chevron) and is now disfigured by a mystery skin condition.

Larry Bowoto, who was shot multiple times by Nigerian soldiers flown in by Chevron to stop a peaceful protest at the company’s devastation of wetlands on which local communities depend, told the meeting survivors of the notorious 1998 shooting in the Niger Delta had been tortured by police, apparently with the company’s knowledge. “We were unarmed. We were there to protest the loss of our fish, our clean drinking water and our food trees.”

Mr. O’Reilly responded by labeling Mr. Bowoto a “criminal”. Mr. Bowoto has never faced an legal proceedings arising from the incident and is now a plaintiff in a lawsuit against Chevron due to be heard in Federal Court in San Francisco in September.

Mercedes Jaramillo, who had traveled by days from her home on a former Texaco oil concession in the Ecuadorian Amazon, had just got two sentences into her presentation before she was cut off by Mr. O’Reilly who claimed, inaccurately, that Texaco had cleaned up the area and attempted to blame Ecuadorian company

PetroEcuador, despite the fact that the overwhelming majority of the pollution in the area was caused by Texaco, which only handed over the concession to PetroEcuador once it was largely exhausted.

Atossa Soltani, Executive Director of Amazon Watch, a US environmental group working on the Ecuador case, then told the meeting that Ms. Jaramillo had wanted to say that her skin condition covers most of her body. Ms. Soltani then asked Mr. O'Reilly what he wanted legacy he wanted to leave Chevron. "Chevron was the sole operator," she added, noting that Chevron designed, constructed and operated the outdated technology that caused devastating toxic contamination.

The controversy appeared to cause growing unrest among the shareholders, several of whom asked Mr. O'Reilly and the other executives why Chevron was failing to put these human rights abuses behind it, allowing its reputation and brand to continue to be tarnished.

Meanwhile, outside the meeting, more than 50 protestors donned full-body haz-mat suits and brooms in a public "clean-up" display highlighting the grave human rights and environmental violations which they say are systemic and rooted in inadequate governance at Chevron's global headquarters in San Ramon.

Emergildo Criollo, an indigenous leader from Ecuador whose two children died after drinking contaminated water and whose wife has suffered uterine cancer, said: "I felt ashamed and embarrassed for Chevron after the cut me off. They wouldn't even hear my voice."

And Omeyle Sowore, a Nigerian human rights campaigner, accused Mr. O'Reilly of being a self-appointed "sheriff", accusing innocent people of being criminals. Ms. Soltani added: "He is enjoying a \$17 billion profit and were are here to remind him that there is a human toll, which his company must address. These issues are not going away and neither are we, unless and until Chevron makes amends to the families and communities it has devastated."

Investors owning more than \$12 billion of Chevron shares supported a resolution filed by New York City's public pension funds, some of the largest institutional investors in the US, calling on management to explain how it assesses human rights protections in countries where it operates. The resolution thus passed the threshold needed for it be re-submitted next year.

Pat Doherty, New York City's Director of Corporate Social Responsibility told the meeting: "As long-term investors we are concerned that potentially serious liabilities such as these arising from the company's international operations run the risk of depressing long-term shareholder value. We are concerned that the company may not be properly evaluating potential environmental and hr risks in its international operations. " Calls for independent review by board of directors.

Today's confrontation comes two months after Chevron was hit with a damages assessment of between \$7 billion and \$16 billion in a landmark class-action environmental lawsuit in Ecuador of up to \$16 billion – potentially the largest judgment in civil court history – and after a U.S. federal judge in San Francisco ordered the company to stand trial in September over the Nigerian slayings.

In light of the various human rights issues, members of San Francisco's Board of Supervisors, including Tom Ammiano, Ross Mirkarimi, and Chris Daly, are filing a resolution that condemns "... Chevron Corporation for a systematic pattern of socially irresponsible activities and complicity in human rights violations that is at odds with the values of the citizens of San Francisco, and at odds with the standards of ethical conduct those citizens expect from corporations based in the Bay Area, in our own communities as well as abroad."

The main human rights issues include:

Nigeria: Security forces flown in and closely supervised by Chevron Nigeria shot nonviolent environmental protestors in an infamous case that will be the focus of two trials in San Francisco later this year. Two people died, several others were injured and some survivors of the attack were then tortured in a Nigerian jail. One decade after the incident, and after years of legal wrangling in American courts, Chevron management has yet to compensate the families of those killed and injured or resolve the original issues raised by the community.

Burma: Chevron's Yadana pipeline has provided revenues that have propped up the country's repressive military dictatorship, while security forces guarding the pipeline have been accused of rape, murder and forced labor. The pipeline has also had significant direct and indirect environmental impacts on the Tenassirm region, one of the largest surviving tracts of tropical rainforest in Southeast Asia, including illegal logging, fishing and poaching. Meanwhile, the pipeline has exacerbated the human rights abuses perpetrated by Burmese security forces against the region's Mon, Karen and Tavoyans indigenous peoples. Naw Musi, a Karen woman who lives in exile, will attend the shareholder's meeting.

Ecuador: Chevron faces an environmental damages claim of between \$7 billion and \$16 billion for causing what experts believe is the most extensive oil-related contamination on the planet. Chevron had admitted to deliberately dumping 18 billion gallons of toxic waste into Amazon waterways and abandoning almost 1,000 open-air toxic waste pits, leading to the decimation of indigenous groups. A court-appointed special master recently found 428 deaths from cancer in the region related to Chevron's oil operations. In addition, community leaders heading the lawsuit have been subject to death threats, office break-ins, and assaults that have resulted in protective measures being ordered by the Inter-American Commission on Human Rights. Community leader Luis Yanza, recently awarded the Goldman Environmental Prize, will lead a delegation of Ecuadorians that includes Emergildo Criollo, a Cofan indigenous leader.

United States: In Richmond, in the East Bay, 35,000 families live in the shadow of a Chevron refinery that spewed out three million pounds of contaminants during the last three years. Existing pollution from Chevron already causes premature death, cancer, and other health ailments. Richmond asthma rates are 5x the state level. Now Chevron wants to expand the refinery, allowing it to process both more and dirtier crude oil, despite overwhelming opposition from local residents. Most of the people who live in the area are minorities, leading to charges of environmental racism.

Concern about Chevron's apparent disregard for human rights has now spilled over to Chevron's shareholders and San Ramon staff. A source within the company has said employees at San Ramon are now increasingly preoccupied by the constant flow of negative news, particularly from Ecuador, and are waiting for CEO David O'Reilly to show leadership on the issue.

###

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 Director of Communications
 Amazon Watch
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 Tel: + 415-487-9600
 Fax: + 415-487-9612
simeon@amazonwatch.org
www.amazonwatch.org

EXHIBIT 6

From: Pablo Fajardo Mendoza [pafabibi@gmail.com]
Sent: Tuesday, August 05, 2008 1:18 PM
To: Yanza; Mar?a Eugenia Y?pez Regalado; Steven Donziger
Subject: APPOINTMENT

Greetings Maria.

I think we need to have a meeting with the President of the Supreme Court of Justice, to discuss the problem with the Nueva Loja Court. I know the guy is a little or a huge son of a bitch, but I think we need to do it, if possible next week.

BB

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New York, NY 10036 • (212) 840-1133

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) a saber:
County of New York)
Condado de Nueva York)


Certificate of Accuracy Certificado de Exactitud

This is to certify that the attached translation is, to the best of our knowledge and belief, a true and accurate translation from Spanish into English of the attached document.

Por el presente certifico que la traducción adjunta es, según mi leal saber y entender, traducción fiel y completa del idioma español al idioma inglés del documento adjunto.

Dated: March 16, 2011

Fecha: 16 de marzo de 2011

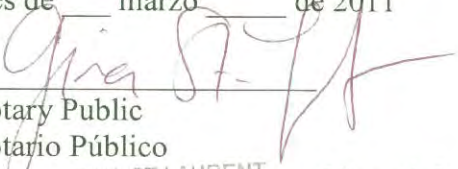


Violeta Lejtman
Team Lead – Legal Translations
Merrill Brink International/Merrill Corporation

[firmado]

Violeta Lejtman
Líder del equipo – Traducciones Legales
Merrill Brink International/Merrill Corporation

Sworn to and signed before
Jurado y firmado ante
Me, this ____ 16th ____ day of
mí, a los ____ 16 ____ días del
____ March ____ 2011
mes de ____ marzo ____ de 2011



Notary Public
Notario Público
GINA ST LAURENT
Notary Public, State of New York
No. 01ST6146442
Qualified in New York County
Commission Expires May 15, 2014
[firmado]
[sello]

From: Pablo Fajardo Mendoza [pafabibi@gmail.com]
Sent: Tuesday, August 05, 2008 1:18 PM
To: Yanza; Mar?a Eugenia Y?pez Regalado; Steven Donziger
Subject: CITA

Saludos Mar?a.

Creo que es necesario que mantengamos una reuni?n con el se?or Preisdente de la Corte Suprema de Justicia, para tratar el problema de la Corte de Nueva Loja. Se que el tipo es un poco o bastante Hijo de puta, pero creo que es necesario, de ser posible para la semana siguiente.

BB

EXHIBIT 7

From: Pablo Fajardo Mendoza [pafabibi@gmail.com]
Sent: Friday, September 12, 2008 3:35 PM
To: María Eugenia Yépez Regalado
Cc: sdonziger
Subject: Re: Corte suprema

Buen trabaj amiga y colegas. seguimos. Yo insisto que el lunes disparemos. El mismo lunes podemos poner el escrito que menciona Julio, como parte de la presión lega y pública.

BB

El 12 de septiembre de 2008 17:28, María Eugenia Yépez Regalado <mey_1802@hotmail.com> escribió:
STEVEN

TE CUENTO QUE DESDE LAS TRES DE LA TARDE HASTA ESTE MOMEMENTO QUE ACABAMOS DE LLEGAR A LA OFICINA CON JULIO Y RENATO HEMOS ESTADO HABLANDO CON LOS MIENBROS DE LA SALA 1 DE LA CORTE SUPREMA DE JUSTICIA, DONDE CAYO EL SORTEO DE LO NUESTRO, REALMENTE FUE MUY POSITIVO ,EL SECRETARIO DE LA SALA QUE ES QUIEN A LA FINAL DARA LAS PAUTAS PARA EL PROCEDIMIENTO, NOS GARANTIZO QUE NO LO HARA PRESCRIBIR Y QUE HAY MUCHAS FORMAS DE SINTETIZAR LOS TRAMITES , EL DIA LUNES CONSEGUI LA CITA CON EL PRESIDENTE DE LA CORTE Y CON EL PRESIDENTE SDE LA SALA QUE ES EL DOCTOR CAZAREST,EXACO HA ESTADO COMO HORMIGAS EN LA CORTE QUISIERA QUE NO TE PREOCUPES TANTO CASI ESTA CONTROLADO.LO UNICO QUE ES NECESARIO Y COINCIDO ES CON LA CARTA QUE PROPONE JULIO A LA CORTE

SALUDOS

MEY

Invite your mail contacts to join your friends list with Windows Live Spaces. It's easy! [Try it!](#)

EXHIBIT 8

From: Steven Donziger [sdonziger@gmail.com]
Sent: Wednesday, February 14, 2007 5:28 PM
To: Maria Eugenia Yepez Regalado
Subject: Re: tasks

That's great!!! You're the best. I'd like to speak with you tonight – where can I call you?

On 2/14/07, **Maria Eugenia Yepez Regalado** <mey_1802@hotmail.com> wrote:

ETEVEN

THIS MORNING I SPOKE WITH MARCO ESTRADA FROM THE MINISTRY OF HEALTH, HE TOLD ME THE MINISTER EXPLAINED OUR ISSUE AT THE CABINET MEETING AND THAT THE PRESIDENT TOLD HER TO URGENTLY FORM A COMMITTEE TO FOLLOW THE CASE CLOSE UP AND REPORT EVERY STEP TO HIM, THE MINISTER OF COURSE HAS ORDERED THE MINISTRY'S ATTORNEYS TO PREPARE A FORM AGREEMENT TO SIGN WITH US TOMORROW I'LL FIRM UP THE MEETING WITH THE ATTORNEYS FOR THE PURPOSE OF REVIEWING THE PROPOSAL. WITH OUR ATTORNEYS.

THE APPOINTMENT WITH THE PRESIDENT HASN'T MATERIALIZED YET, HE HAS BEEN VERY BUSY WITH THE CONGRESS MATTER, I'M BEHIND IT.

TOMORROW I'LL HAVE THE THING FOR AMBATO READY AND WE'VE SET IT WITH LUIS FOR MARCH 2, THE PRESS CONFERENCE IS INITIALLY SET FOR MONDAY, FEBRUARY 26, AS LONG AS THE ORDER COMES OUT.

I REQUESTED THE APPOINTMENTS WITH *COMERCIO* AND *LA HORA* [media outlets], IT WILL BE MATERIALIZED TOMORROW, I'VE REQUESTED THEM FOR FEBRUARY 28.

MARIA EUGENIA IS ALREADY WELL ALONG IN HER WORK AS WELL AS SILVIA.

REGARDING THE POSTERS, ON FRIDAY I'VE GOT A MEETING WITH THE PEOPLE WHO HAVE DESIGNED THEM IN ORDER TO DEFINE PICTURES AND MESSAGES.

I'LL REPORT TO YOU ON THE REST TOMORROW.

CIAO, LITTLE OGRE!

YOUR SERVANT, ISaura

MARIA EUGENIA YEPEZ.

Chat with your friends online through MSN Messenger:
<http://messenger.latam.msn.com/>

--

Steven Donziger
212-570-4499 (land)
212-570-9944 (fax)
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Condado de Nueva York)

Certificate of Accuracy Certificado de Exactitud

This is to certify that the attached translation is, to the best of our knowledge and belief, a true and accurate translation from Spanish into English of the attached document.

Por el presente certifico que la traducción adjunta es, según mi leal saber y entender, traducción fiel y completa del idioma español al idioma inglés del documento adjunto.

Dated: March 11, 2011

Fecha: 11 de marzo de 2011

Violeta Lejtman
Team Lead – Legal Translations
Merrill Brink International/Merrill Corporation

[firmado]

Violeta Lejtman
Líder del equipo – Traducciones Legales
Merrill Brink International/Merrill Corporation

Sworn to and signed before
Jurado y firmado ante
Me, this 11th day of
mí, a los 11 días del
March 2011
mes de marzo de 2011

Notary Public
Notario Público

GINA ST LAURENT
Notary Public, State of New York
No. 01ST6146442
Commission Expires May 15, 2014

[firmado]
[sello]

From: Steven Donziger [sdonziger@gmail.com]
Sent: Wednesday, February 14, 2007 5:28 PM
To: María Eugenia Yépez Regalado
Subject: Re: tareas

Que bueno!!! Eres la maxima. Quiero hablar con Ud esta noche -- donde te puedo llamar?

On 2/14/07, **María Eugenia Yépez Regalado** <mey_1802@hotmail.com> wrote:
ETEVEN

ESTA MAÑANA HABLE CON MARCO ESTRADA DEL MINISTERIO DE SALUD , ME COMENTO QUE LA MINISTRA EXPUSO LO NUESTRO EN LA REUNION DE GABINETE Y QUE EL PRESIDENTE LE DIJO QUE EN FORMA URGENTE CONFORME UNA COMISIÓN QUE SIGA DE CERCA EL CASO Y QUE LE INFORMARA CADA PASO , LA MINISTRA POR SUPUESTO HA DISPUESTO A LOS ABOGADOS DEL MINISTREIO PARA QUE HAGAN UN FORMATO DE ACUERDO PARA FIRMARLO CON NOSOTROS MAÑANA CONCRETO LA REUNION CON LOS ABOGADOS A FIN DE REVISAR LA PROPUESTA.CON NUESTROS ABOGADOS .

LA CITA CON EL PRSIDENTE NO SE CONCRETA TODAVIA , EL HA ESTADO MUY OCUPADO CON EL TEMA DEL CONGRESO , ESTOY TRAS DE ELLO.

MAÑANA TENGO LISTO LO DE AMBATO Y LO HEMOS FIJADO CON LUIS PARA EL 2 DE MARZO, LA RUEDAD PRENSA EN PRINCIPIO ESTA PARA EL DIA LUNES 26 DE FEBRERO,TODA VEZ QUE SALGA LA PROVIDENCIA.

PEDI LAS CITAS CON COMERCIO Y LA HORA , MAÑANA SE CONCRETA , LAS HE PEDIDO PARA EL 28 D FEBRERO.

MARIA EGENIA YA TIENE MUY AVANZADAS SUS TAREAS AL IGUAL QUE SILVIA.

SOBRE LOS AFICHES EL VIERNES TENGO UNA REUNIÓN CON LOS QUE YA HA DISEÑADOR PARA DEFINIR FOTOGRAFIAS Y MENSAJES.

MAÑANA TE INFORMARE SOBRE EL RESTO DE COSAS.

CHAO OGRITO

TU ESCLAVA ISAURA

MARRIA EUGENIA YEPEZ.

Charla con tus amigos en línea mediante MSN Messenger:
<http://messenger.latam.msn.com/>

Steven R. Donziger
Law Offices of Steven R. Donziger, P.C.
245 W. 104th St., #7D
New York, New York 10025
Email: sdonziger@gmail.com

EXHIBIT 9

From: M^a Guadalupe De Heredia [lupitadeheredia@gmail.com]
Sent: Tuesday, October 16, 2007 2:29 PM
To: Steven Donziger
Subject: Volunteers are here

Steven,
The law students from Colorado are here, i told them to translate the "panfleto" and they are coming back this afternoon around 3 o'clock when Joseph is going to be here.
I want to work out with them and Joseph a plan for international organisations in the US to let them know about us.
Please let me know if you have more things for them to do till you come here.
LDH

--

M^a Guadalupe De Heredia
Tel. 59399707-369
Quito- Ecuador

10/16/2007

JA018256 of 326

DONZ-HDD-0131188

EXHIBIT 10

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

In re Application of Chevron Corporation, et al

Plaintiff

v.

Defendant

Civil Action No. 10-MC-0002

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Yahoo! Inc.

(c/o Registered Agent CT Corporation System, 111 Eighth Avenue, New York, New York 10011)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Documents adequate to permit the account holder of "documents2010@gmail.com" to access the e-mail stored in the account. The account password would satisfy this request.

This request is made with the consent of the account holder/subscriber, Steven R. Donziger (the account was created by Mr. Donziger's assistant, Andrew M. Woods, who also consents to this request).

Place: Friedman Kaplan Seiler & Adelman LLP 1633 Broadway, 46th Floor New York, New York 10019	Date and Time: 12/03/2010 9:00 am
--	--

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/29/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Steven R. Donziger, who issues or requests this subpoena, are:

Bruce S. Kaplan, Friedman Kaplan Seiler & Adelman LLP, 1633 Broadway, 46th Floor, NY, NY 10019

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re Chevron Corporation

Plaintiff

v.

Defendant

Civil Action No. 10-MC-0002

(If the action is pending in another district, state where:
Southern District of New York)SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Yahoo! Inc.

Custodian of Records, Legal Department, 701 1st Avenue, Sunnyvale, CA 94089

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: The contents, including all e-mail, of the account "documents2010@ymail.com"

This request is made with the consent of the account holder/subscriber, Steven R. Donziger (the account was created by Mr. Donziger's assistant, Andrew M. Woods, who also consents to this request).

Place: Friedman Kaplan Seiler & Adelman LLP 1633 Broadway, 46th Floor New York, NY 10019	Date and Time: 12/16/2010 9:00 am
--	--

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/09/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Steven R. Donziger, who issues or requests this subpoena, are:

Bruce S. Kaplan, Friedman Kaplan Seiler & Adelman LLP, 1633 Broadway, 46th Floor, NY, NY 10019

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re Chevron Corporation

Plaintiff

v.

Defendant

Civil Action No. 10-MC-0002

(If the action is pending in another district, state where:
Southern District of New York)SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Yahoo! Inc.

Custodian of Records, Legal Department, 701 1st Avenue, Sunnyvale, CA 94089

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: The documents identified in the attached "Exhibit A."

This request is made with the consent of the account holder/subscriber, Steven R. Donziger (the account was created by Mr. Donziger's assistant, Andrew M. Woods, who also consents to this request).

Place: Friedman Kaplan Seiler & Adelman LLP
1633 Broadway, 46th Floor
New York, NY 10019

Date and Time:

01/07/2011 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 01/03/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Steven R. Donziger, who issues or requests this subpoena, are:

Bruce S. Kaplan, Friedman Kaplan Seiler & Adelman LLP, 1633 Broadway, 46th Floor, NY, NY 10019 (FAX: 212-833-1250) (EMAIL: bkaplan@fklaw.com)

EXHIBIT A

1. All documents identifying IP addresses associated with attempts to access the account “documents2010@ymail.com”.
2. All documents providing any information about attempts (whether successful or unsuccessful) to gain access to the account “documents2010@ymail.com”. This would include, but is not limited to, documents identifying the dates and times of such attempts and/or the location (whether by IP address or otherwise) of the attempts.
3. All documents reflecting any information provided to Yahoo! when the account “documents2010@ymail.com” was created. This would include, but is not limited to, documents reflecting any information provided by the user of the account. It would also include documents that reflect the time and date of the account creation, and the location (whether by IP address or otherwise) of the user who created the account.
4. All documents reflecting information about transactional activity associated with the account “documents2010@ymail.com.” This would include, but is not limited to, documents reflecting the time(s) that the account is accessed, and the nature of activity in the account (such as transmission or receipt of e-mails).

EXHIBIT 11

From: Alberto Guerra [albertoguerrab@hotmail.com]
Sent: Sunday, September 05, 2010 3:07 PM
To: Steven Dozinger
Subject: Regards from Quito

Dear Steven:

Alberto Guerra Bastidas here, apart from a warm greeting, I would appreciate your helping my daughter Gabriela Guerra with respect to the mechanics of obtaining her residence in the United States. She entered [the US] last October of 2009 with a tourist visa. Later, in June of 2010 she changed her status from tourist to student, so she is legal for one year until June 2011. She has an American boyfriend who for the purpose of making her legal, and for love, she says, they want to get married. Questions: is it more convenient to have the wedding in the US or in Ecuador.- With the marriage how long will it take to get the residency worked out.- What is an estimate of the cost of the procedures.- and attorney's fees. By the way, my daughter is in Chicago. I will support the matter of Pablo Fajardo so it will come out soon and well.

I have asked my daughter to write or call you on the phone, for the second case I will ask Pablo for your number.

Affectionately.

MERRILL CORPORATION

Merrill Communications LLC



225 Varick Street
New York, NY 10014


State of New York)
Estado de Nueva York)
) ss:
) a saber:
County of New York)
Condado de Nueva York)

Certificate of Accuracy Certificado de Exactitud

This is to certify that the attached translation is, to the best of our knowledge and belief, a true and accurate translation from Spanish into English of the attached document.

Por el presente certifico que la traducción adjunta es, según mi leal saber y entender, traducción fiel y completa del idioma español al idioma inglés del documento adjunto.

Dated: August 16, 2011
Fecha: 16 de agosto de 2011

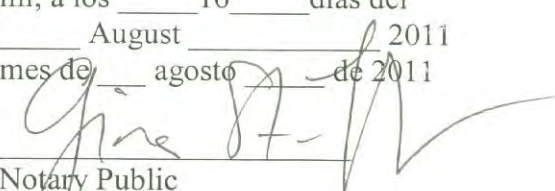


Violeta Lejtman
Team Lead – Legal Translations
Merrill Brink International/Merrill Corporation

[firmado]

Violeta Lejtman
Líder del equipo – Traducciones Legales
Merrill Brink International/Merrill Corporation

Sworn to and signed before
Jurado y firmado ante
Me, this 16th day of
mí, a los 16 días del
August 2011
mes de agosto de 2011



Notary Public
Notario Público

GINA ST LAURENT
Notary Public, State of New York
No. 01ST6146442
Qualified in New York County
Commission Expires May 15, 2014
[firmado]
[sello]

OFFICES IN MAJOR CITIES THROUGHOUT THE WORLD

JA019264 of 326

From: Alberto Guerra [albertoguerrab@hotmail.com]
Sent: Sunday, September 05, 2010 3:07 PM
To: Steven Dozinger
Subject: Saludos de Quito

Estimado Steven:

Alberto Guerra Bastidas, aparte de saludarte muy afectuosamente, te solicito tengas a bien orientar a mi hija Gabriela Guerra respecto a la mecanica para obtener su residencia en los Estados Unidos. Ella, ingreso en octubre pasado del 2009 con visa de turismo. Posteriormente, en junio del 2010 cambio su status de turista a estudiante, por lo que se encuentra legal por un año esto es hasta junio del 2011. Tiene un novio amricano mismo que a efecto de legalizarla y por amor segun señala, quiere casarse. Inquietudes: el matrimonio es conveniente hacerlo en USA o Ecuador.- Con el matrimonio en que tiempo se arregla la situacion de residencia.- Estimativamente cuanto cuesta el tramite.- y Honorarios de un abogado. A proposito mi hija se encuentra en la ciudad de Chicago. Yo apoyo para que el tema relacionado con Pablo Fajardo salga pronto y bien.
He solicitado a mi hija que te escriba o llame por telefono, para eñil segundo caso, solicitare tu numero a Pablo. Afectuosamenete.

EXHIBIT 12



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 Simeon Tegel is a British journalist based in Lima, Peru. He covers a broad range of themes across Latin America including politics, society, culture and sports ...

[SIMEON TEGEL](#)[simeontegel.com/](#)

Simeon Tegel is a British journalist based in Peru. He writes about a broad range of themes across Latin America but specializes in environment and adventure.

[Simeon Tegel \(SimeonTegel\) on Twitter](#)<https://twitter.com/SimeonTegel>

Simeon Tegel. @SimeonTegel. British freelance journalist based in Peru. Covers LatAm, specializes in environment and adventure. Writes for GlobalPost and ...

[Simeon Tegel - The Independent](#)[www.independent.co.uk/biography/simeon-tegel](#)

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 Simeon Tegel. Simeon Tegel is a British journalist based in Lima, Peru, and covering Latin America. Visit his website at simeontegel.com. Follow Simeon Tegel ...

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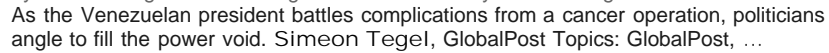
Aug 31, 2011 – Simeon Tegel is a British journalist based in Lima, Peru. His writing on environmental and other issues appears in newspapers and magazines ...

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2 days ago – Simeon Tegel is a British journalist based in Lima, Peru. He writes about a broad range of themes across Latin America and publishes widely.

[Simeon Tegel | MinnPost](#)[www.minnpost.com/author/simeon-tegel](#)

by Simeon Tegel - in 26 Google+ circles - More by Simeon Tegel



simeon tegel variety



EXHIBIT 13

From: Steven Donziger
To: Juan Pablo Sáenz; JULIO PRIETO; Pablo Fajardo Mendoza; LUIS YANZA; Kevin Koenig; M^a Guadalupe De Heredia G.; María Eugenia Yépez Regalado
Sent: Mon 9/7/2009 11:42:23 PM GMT
Subject: note Charles James menciona Callejas abajo en la entrevista

Creo que todo eso fue organizado de la oficina de Callejas; hay que llamar alla que la oficina de Callejas sea investigado por su papel corrupto y ilegal. Eso puede seguir lo cobertura alla por varias dias mas.

Lupe y MEY, siguen con las entrevistas de radio dia tras dia; cada dia revela un poca mas informacion, para que sigue todos los dias y estamos controlando las noticias. hablamos por telefono primera hora martes.

abrazos, SRD

Former Chevron GC Speaks Out On Ecuadorian Recordings

Posted by Brian Baxter
Charles James's legal career just got a little more interesting.

The former antitrust chair at Jones Day and head of the Justice Department's antitrust division was promoted to executive vice president of Chevron in April after serving as general counsel for seven years. During that time James oversaw a mammoth environmental mass torts case filed against the company by 30,000 indigenous plaintiffs in Ecuador. On Monday that case took yet another dramatic turn when Chevron announced it had obtained a series of videotaped meetings showing evidence of bribery on the part of Judge Juan Núñez, who has overseen legal proceedings in the northern Ecuadorian town of Lago Agrio since August of last year. (Judge Núñez is the fourth judge on the case.) The Am Law Daily caught up with James to talk about the case, the videotapes, and where he sees Chevron's decade-long legal battle going next.

When did you become aware of these recordings?

The recordings came to the attention of one of our company representatives in Ecuador in early June. I received a call from Edward Scott, the vice president and general counsel of our upstream business unit, shortly thereafter.

Was there due diligence done on the tapes?

We wanted to handle this as responsibly as we could and not have a hysterical reaction. So first we went about getting interviews with [the two individuals who did the recording] and making sure we had good transcriptions of the tapes. We also did some forensic analysis. We're an energy company, not an investigator, so we had to do some due diligence before we turned this over to the appropriate authorities.

Were outside and in-house counsel involved in this process?

The interviews were conducted predominantly by outside counsel, although our method of legal organization is for us to exercise fairly close in-house oversight of outside lawyers. So in-house legal resources have been involved in this.

By outside lawyers does that mean Tim Cullen from Jones Day and Doak Bishop from King & Spalding?

Unfortunately, this whole affair has forced us to engage quite a few lawyers. But those are among the lead lawyers, yes. Adolfo Callejas is our senior outside lawyer in Ecuador.

Chevron claims it had no prior relationship or knowledge of one of the individuals who recorded these conversations--American businessman Wayne Hansen. The company admits it has had a contractual relationship with the second, Diego Borja. Did they retain outside counsel in their interviews with Chevron?

We're not going to get into the details of their legal situations. We'll speak to ours. Borja and his family have been relocated by Chevron outside of Ecuador because of security concerns.

What's the next step in this process for Chevron? I know that a letter has been sent to the prosecutor general of Ecuador. Have you received a response?

Thus far what we have seen is wild and accusatory responses from Alexis Mera, whom I understand is the moral equivalent of White House counsel in Ecuador. We've seen a more measured response from the prosecutor general, who says he's conducting an investigation. We'll proceed to follow up and file through the judicial process our motions to disqualify the judge and annul his rulings. And then we hope that this investigation by the prosecutor general is a fair, transparent, and comprehensive one. Once we understand the findings of that inquiry, we'll contemplate our next step.

What's your response to Mera's allegations that Chevron illegally intercepted conversations without authorization?

We were disappointed that he appears to be taking a lead role with regard to this as his name comes up fairly prominent on those tapes. We'd hope that the investigation and the [Ecuadorian] government's response would be unconflicted and independent. But obviously we don't run that country. Here in the U.S., a person mentioned in an investigation probably wouldn't be one of the same people conducting it. The differences between the two [countries] seem to be becoming stark and more apparent by the day.

What about Judge Núñez's denials?

Even if you separate the bribery aspect of this, our perspective is that the whole event of the meetings with the judge was inappropriate. The meetings were not with parties to the case. And [Núñez] is talking about granting contracts for a judgment that he hasn't even entered! I can't imagine a set of ethical standards with some semblance of impartiality that would permit these kind of discussions.

Does Chevron want to get this case back to the U.S. where it was filed in 1993?

This case is going to be fought in multiple jurisdictions as it goes along. We have not asked for the case to be brought back to the U.S. We think it ought to be dismissed in Ecuador, not necessarily because of these events, but because the cause is meritless and fraught with corruption and political irregularities. These events only confirm some of the things that we've been saying about the circumstances [in Ecuador] for quite some time.

Have you ever been to Ecuador?

I have never been there and probably won't be going soon. Throughout this entire trial in Ecuador the lawyers that we've had to engage within our company and outside it have had to act with a certain kind of courage just to participate in legal proceedings. One of our principal local lawyers was indicted last year.

Would you say that the chips in Ecuador are stacked against you?

— —

DONZ00066778 Page 3 of 3

EXHIBIT 14



Microsoft Online Privacy Statement

(last updated April 2012)

[view the privacy statement highlights](#)

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- We collect additional information about your interaction with Microsoft sites and services without identifying you as an individual. For example, we receive certain standard information that your browser sends to every website you visit, such as your IP address, browser type and language, access times and referring Web site addresses. We also use Web site analytics tools on our sites to retrieve information from your browser, including the site you came from, the search engine(s) and the keywords you used to find our site, the pages you view within our site, your browser add-ons, and your browser's width and height.
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- **Microsoft Billing and Account Services** - If you have a Microsoft Billing account, you can add to or update your information at the [Microsoft Billing Web site](#) by clicking on the "Personal Information" or "Billing Information" links.
- **Microsoft Connect** - If you are a registered user of Microsoft Connect, you can access and edit your personal information by clicking [Manage Your Connect Profile](#) at the Microsoft Connect Web site.
- **Windows Live** - If you have used Windows Live services, you can update your profile information, change your password, view the unique ID associated with your credentials, or close certain accounts by visiting Windows Live [Account Services](#).
- **Windows Live Public Profile** - If you have created a public profile on Windows Live, you may also edit or delete information in your public profile by going to your [Windows Live profile](#).
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- **Zune** - If you have a Zune account or a Zune Pass subscription, you can view and edit your personal information at [Zune.net](#) (sign in, access your Zune tag then My Account or through the Zune software, (sign in, access your Zune tag, then select Zune.net profile)."

In case you cannot access personal data collected by Microsoft sites or services via the links above, these sites and services may provide you with alternative means of access to your data. In any case, you can contact Microsoft by using the [web form](#).

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- Microsoft's [Promotional Communications Manager](#) allows you to update contact information, manage Microsoft-wide contact preferences, opt out of subscriptions, and choose whether to share your contact information with Microsoft partners. If you do not have a Microsoft account, you can manage your Microsoft email communication preferences by using this [web form](#).
- The [Microsoft.com Profile Center](#) allows you to choose whether you wish to receive marketing communications from Microsoft.com, to select whether Microsoft.com may share your contact information with selected third parties, and to subscribe or unsubscribe to newsletters about our products and services.

- The [MSN & Windows Live Communications Preferences](#) page allows you to choose whether you wish to receive marketing material from MSN or Windows Live. You may subscribe and unsubscribe to MSN Newsletters by going to the [MSN Newsletters website](#).
- If you have an Xbox.com or Xbox LIVE account, you can set your contact preferences and choose whether to share your contact information with Xbox partners by accessing [My Xbox](#) on the Xbox 360 console or on the Xbox.com website. To access these settings on the Xbox.com website, select My Xbox, Profile then Contact Preferences. On the Xbox 360 console, select My Xbox, Profile then Online Safety.
- If you are registered with Microsoft Partner Programs, you can set your contact preferences or choose to share your contact information with other Microsoft partners by clicking [Manage Your Account](#) on the Partner Program Web site.
- If you have a Zune account or a Zune Pass subscription, you can set your contact preferences and choose whether to share your contact information with Zune partners at [Zune.net](#) (sign in, access your Zune tag then My Account, Newsletter options or through the Zune software (sign in, access your Zune tag, then select Zune.net profile.)

In any case, you can inform Microsoft by using this web form about your wish to stop the delivery of future promotional e-mail. These choices do not apply to the display of online advertising: please refer to the section "Display of Advertising (Opt-out)" for information on this matter. Nor do they apply to the receipt of mandatory service communications that are considered part of certain Microsoft services, which you may receive periodically unless you cancel the service.

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Display of Advertising (Opt-Out)

Many of our Web sites and online services are supported by advertising.

Most of the online advertisements on Microsoft sites are displayed by Microsoft Advertising. When we display online advertisements to you, we will place one or more persistent cookies on your computer in order to recognize your computer each time we display an ad to you. Because we serve advertisements on our own websites as well as those of our advertising and publisher partners, we are able to compile information over time about the types of pages, content and ads you, or others who are using your computer, visited or viewed. This information is used for many purposes, for example, it helps us try to ensure that you do not see the same advertisements over and over again. We also use this information to help select and display targeted advertisements that we believe may be of interest to you.

You may opt-out of receiving targeted ads from Microsoft Advertising by visiting our [opt-out page](#). For more information about how Microsoft Advertising collects and uses information, please see the [Microsoft Advertising Privacy Supplement](#).

We also allow third-party ad companies, including other ad networks, to display advertisements on our sites. In some cases, these third parties may also place cookies on your computer. These companies currently include, but are not limited to: [24/7 Real Media](#), [aCerno, Inc.](#), [AdBlade](#), [AdConion](#), [AdFusion](#), [Advertising.com](#), [AppNexus](#), [Bane Media](#), [Brand.net](#), [CasaleMedia](#), [Collective Media](#), [Fox Interactive](#), [Interclick](#), [Millennial](#), [PrecisionClick](#), [ROI Media](#), [Social Media](#), [SpecificMedia](#), [TrafficMarketplace](#), [Tribal Fusion](#), [ValueClick](#), [Yahoo!](#), [YuMe](#), and [Zumobi](#). These companies may offer you a way to opt-out of ad targeting based on their cookies. You may find more information by clicking on the company names above and following the links to the Web sites of each company. Many of them are also members of the [Network Advertising Initiative](#) or the [Digital Advertising Alliance](#), which each provide a simple way to opt-out of ad targeting from participating companies.

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Security of Your Personal Information

Microsoft is committed to protecting the security of your personal information. We use a variety of security technologies and procedures to help protect your personal information from unauthorized access, use, or disclosure. For example, we store the personal information we collect on computer systems with limited access, which are located in controlled facilities. When we transmit highly confidential information (such as a credit card number or password) over the Internet, we protect it through the use of encryption, such as the Secure Socket Layer (SSL) protocol.

If a password is used to help protect your accounts and personal information, it is your responsibility to keep your password confidential. Do not share this information with anyone. If you are sharing a computer with anyone you should always log out before leaving a site or service to protect access to your information from subsequent users.

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Collection and Use of Children's Personal Information

Many Microsoft sites and services are intended for general audiences and do not knowingly collect any personal information from children. When a Microsoft site does collect age information, and users identify themselves as under 13, the site will either block such users from providing personal information, or will seek to obtain consent from parents for the collection, use and sharing of their children's personal information. We will not knowingly ask children under the age of 13 to provide more information than is reasonably necessary to provide our services.

Please note that if you grant consent for your child to use Microsoft services, this will include such general audience communication services as e-mail, instant messaging, and online groups, and your child will be able to communicate with, and disclose personal information to, other users of all ages. Parents can change or revoke the consent choices previously made, and review, edit or request the deletion of their children's personal information. For example, on MSN and Windows Live, parents can visit Account Services, and click on "Permission for kids." If we change this privacy statement in a way that expands the collection, use or disclosure of children's personal information to which a parent has previously consented, the parent will be notified and we will be required to obtain the parent's additional consent.

If you have an MSN Premium, MSN Plus, or MSN 9 Dial-Up account, and use MSN Client software version 9.5 or below, you can choose to set up MSN Parental Controls for the other users of that account. Please read the supplemental privacy information for [MSN](#) for further information.

We encourage you to talk with your children about communicating with strangers and disclosing personal information online. You and your child can visit our [online safety resources](#) for additional information about using the Internet safely.

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Use of Cookies

Most Microsoft Web sites use "cookies," which are small text files placed on your hard disk by a Web server. Cookies contain information that can later be read by a Web server in the domain that issued the cookie to you.

One of the primary purposes of cookies is to store your preferences and other information on your computer in order to save you time by eliminating the need to repeatedly enter the same information and to display your personalized content and targeted advertising on your later visits to these sites. Microsoft Web sites also use cookies as described in the [Display of Advertising](#) sections of this privacy statement.

When you sign in to a site using your Microsoft account, we store your unique ID number, and the time you signed in, in an encrypted cookie on your hard disk. This cookie allows you to move from page to page at the site without having to sign in again on each page. When you sign out, these cookies are deleted from your computer. We also use cookies to improve the sign in experience. For example, your e-mail address may be stored in a cookie that will remain on your computer after you sign out. This cookie allows your e-mail address to be pre-populated, so that you will only need to type your password the next time you sign in. If you are using a public computer or do not otherwise

want this information to be stored, you can select the appropriate radio button on the sign-in page, and this cookie will not be used.

You have the ability to accept or decline cookies. Most Web browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies if you prefer. If you choose to decline cookies, you may not be able to sign in or use other interactive features of Microsoft sites and services that depend on cookies, and some advertising preferences that are dependent on cookies may not be able to be respected.

If you choose to accept cookies, you also have the ability to later delete cookies that you have accepted. For example, in Internet Explorer 8, you can delete cookies by selecting "Tools", "Delete browsing history". Then select the control box "Cookies" and click the "Delete" button. If you choose to delete cookies, any settings and preferences controlled by those cookies, including advertising preferences, will be deleted and may need to be recreated.

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Use of Web Beacons

Microsoft Web pages may contain electronic images known as Web beacons - sometimes called single-pixel gifs - that may be used to assist in delivering cookies on our sites and allow us to count users who have visited those pages and to deliver co-branded services. We may include Web beacons in promotional e-mail messages or our newsletters in order to determine whether messages have been opened and acted upon.

Microsoft may also employ Web beacons from third parties in order to help us compile aggregated statistics regarding the effectiveness of our promotional campaigns or other operations of our sites. We prohibit Web beacons on our sites from being used by third parties to collect or access your personal information.

Finally, we may work with other companies that advertise on Microsoft sites to place Web beacons on their sites in order to allow us to develop statistics on how often clicking on an advertisement on a Microsoft site results in a purchase or other action on the advertiser's site.

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Controlling Unsolicited E-mail ("Spam")

Microsoft is concerned about controlling unsolicited commercial e-mail, or "spam." Microsoft has a strict [Anti-Spam Policy](#) prohibiting the use of a Windows Live Hotmail or other Microsoft-provided e-mail account to send spam. Microsoft will not sell, lease or rent its e-mail subscriber lists to third parties. . While Microsoft continues to actively review and implement new technology, such as expanded filtering features, there is no technology that will totally prevent the sending and receiving of unsolicited e-mail. Using junk e-mail tools and being cautious about the sharing of your e-mail address while online will help reduce the amount of unsolicited e-mail you receive.

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TRUSTe Certification

Microsoft has been awarded TRUSTe's Privacy Seal signifying that this privacy statement and our practices have been reviewed by TRUSTe for compliance with TRUSTe's program requirements including transparency, accountability and choice regarding the collection and use of your personal information. The TRUSTe program does not cover information that may be collected through downloadable software. TRUSTe's mission, as an independent third party, is to accelerate online trust among consumers and organizations globally through its leading privacy trustmark and innovative trust solutions.

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Enforcement of This Privacy Statement

If you have questions regarding this statement, you should first contact us by using our [Web form](#). If you do not receive acknowledgement of your inquiry or your inquiry has not been satisfactorily addressed, you should then contact TRUSTe at http://www.truste.org/consumers/watchdog_complaint.php. TRUSTe will serve as a liaison with Microsoft to resolve your concerns.

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Changes to This Privacy Statement

We will occasionally update this privacy statement to reflect changes in our services and customer feedback. When we post changes to this Statement, we will revise the "last updated" date at the top of this statement. If there are material changes to this statement or in how Microsoft will use your personal information, we will notify you either by prominently posting a notice of such changes prior to implementing the change or by directly sending you a notification. We encourage you to periodically review this statement to be informed of how Microsoft is protecting your information.

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How to Contact Us

For more information about our privacy practices, go to the full [Microsoft Online Privacy Statement](#).

- If you have a technical or general support question, please visit <http://support.microsoft.com/> to learn more about Microsoft Support offerings.
- If you suspect your Hotmail/Live account has been hacked or taken over, please visit [Live Help](#).
- If you have a Hotmail/Live password question, please visit [Live Help](#).
- For general Microsoft Privacy issues, please contact us by using our [Web form](#).

Microsoft Privacy, Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052 USA • 425-882-8080

To find the Microsoft subsidiary in your country or region, see <http://www.microsoft.com/worldwide/>.

[Anti-Spam Policy](#)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----- X
CHEVRON CORPORATION,

Plaintiff,

-against-

1:12-MC-65 LAK/CFH

STEVEN DONZIGER, et al.,

Defendants.
----- X

ORDER TO SHOW CAUSE

LEWIS A. KAPLAN, *District Judge*.

One of the motions to quash in this matter was filed on behalf of non-party “John Doe” movants, “John Doe” being a fictitious name.

Federal Rule of Civil Procedure 10(a) requires that the complaint in a civil action include a caption that “name[s] all the parties.” This serves several important purposes including but not limited to the proper application of the rules of former adjudication.

Rule 10(a) does not expressly contain any such requirement with respect to motions filed by non-parties, in all likelihood because the question whether non-party movants should be identified rarely if ever arises in consequences of the fact that their identities always or nearly always are known. Nonetheless, it appears that the policies underlying Rule 10(a) apply to this motion.

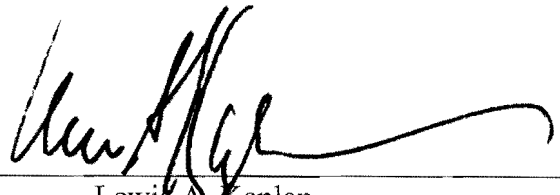
There is an additional consideration. These movants have filed a declaration for consideration on the motion that counsel has stated is that of one of her clients. The document is signed only with the alleged client’s e-mail address. As identification of the owner of the e-mail address in question is an object of the subpoena that the movants seek to quash, it is impossible for the Court, or those of the parties who do not already know with certainty who owns the e-mail address with which the declaration was signed, to know who actually signed the declaration. Thus, lack of the true name of the declarant could impede prosecution of the declarant in the event that there were reason to believe that the declaration is false.

In the circumstances, it is appropriate to consider whether Rule 10(a) and/or other provisions of the Federal Rules should be construed to require identification, at least to the Court,

of any person or entity that appears in a federal action. The “John Doe” movants shall show cause, on or before February 6, 2013, why they should not be required to submit to the undersigned affidavits or declarations revealing to the Court their true identities which will be filed under seal unless and until the Court otherwise orders. The Court well understands that the question whether the “John Does” identities should be revealed to Chevron or more broadly is distinct from the question whether the Court should be so informed and does not intend to address that issue – which is implicated by the pending motion – on this order to show cause.

SO ORDERED.

Dated: January 23, 2013

A handwritten signature in black ink, appearing to read 'Lewis A. Kaplan', is written over a horizontal line.

Lewis A. Kaplan
United States District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiff,

-against-

Case No. 1:12-mc-00065-LK-CFH

Hon. Lewis A. Kaplan

STEVEN DONZIGER, *et al.*,

Defendants.

**SUPPLEMENTAL DECLARATION OF MICHELLE HARRISON IN SUPPORT OF
MOTION OF NON-PARTY MOVANTS TO QUASH SUBPOENAS TO GOOGLE, INC.
AND YAHOO! INC. SEEKING IDENTITY AND EMAIL USAGE INFORMATION**

1. I, Michelle Harrison, have personal knowledge of all matters set forth in this declaration. If called upon to do so, I could and would testify to all matters set forth herein.

2. I am a law clerk with EarthRights International, counsel of record for Non-Party John Doe Movants.

3. EarthRights International and the Electronic Frontier Foundation represent the owners of the Microsoft email accounts simeontegel@hotmail.com, mey_1802@hotmail.com, pirancha@hotmail.com, and duruti@hotmail.com. The owner of duruti@hotmail.com joined the Non-Party John Doe Movants' motion to quash Chevron's subpoena to Microsoft on January 28, 2013.

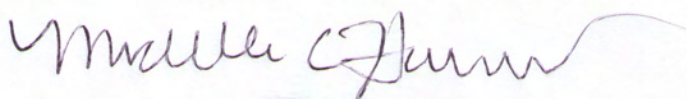
4. My original declaration stated that we represent the owner of the email account lupitadeheredia@hotmail.com. In fact, that email address is not listed in Chevron's subpoena to Microsoft and therefore is not at issue in this case.

5. We also represent the owners of the following Google and Yahoo! email account addresses for the purpose of a separate motion to quash filed in the Northern District of

California: cortelyou@gmail.com, sayjay80@gmail.com, kevinkoenigquito@gmail.com, marialya@gmail.com, coldmtn@gmail.com, figer@gmail.com, bandawatch@gmail.com, catmongeon@gmail.com, briansethparker@gmail.com, lupitadeheredia@gmail.com, josephmutti@gmail.com, drewwoods3@gmail.com, katiafachgomez@gmail.com, tegelsimeon@gmail.com, lara_garr@gmail.com, richard.clapp@gmail.com, ampage@gmail.com, goldstein.ben@gmail.com, wilsonaguinda@gmail.com, sara.colon@gmail.com, farihahzaman@gmail.com, jeremylow@gmail.com and courtneyrwong@gmail.com, jenbilbao3@yahoo.com, kshuk22@yahoo.com, eriktmoe66@yahoo.com, drewwoods3@yahoo.com, lupitadeheredia@yahoo.com, and Lore_gamboa@yahoo.es.

6. I contacted a number of the email addresses listed in Chevron's subpoenas. In response, some of these email addresses sent messages back informing me that the message could not be delivered, indicating these addresses are no longer in use or no longer functional for other reasons. These addresses include alex_anchundia2007@hotmail.com, luisvillacreces@hotmail.com, aulestiajuan@hotmail.com, gaer69chzpr@hotmail.com, and hjploro@hotmail.com.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 31, 2013.



MICHELLE C. HARRISON

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-MC-00065-LK-CFH

Hon. Lewis A. Kaplan

STEVEN DONZIGER, *et al.*,

Defendants.

**DECLARATION OF JOHN DOE #2 (OWNER OF PIRANCHA@HOTMAIL.COM) IN
SUPPORT OF MOTION OF NON-PARTY JOHN DOE MOVANTS TO QUASH
SUBPOENA TO MICROSOFT INC. SEEKING IDENTITY AND EMAIL USAGE
INFORMATION**

Using my email address, pirancha@hotmail.com, instead of my actual name, in order to protect my identity pursuant to my rights under the First Amendment and New York law, I declare as follows:

1. I am the owner of the email account pirancha@hotmail.com. I have personal knowledge of all matters set forth in this declaration. If called upon to do so, I could and would testify to all matters set forth herein.
2. I am providing this declaration under my email address because I wish to protect my rights to free speech and participation in associational activities. I also wish to avoid making moot these very issues, which I have raised in this motion. A true and correct copy of my actual signature for this document resides with my attorneys.
3. In September 2012, I received notice from Microsoft of a subpoena issued in relation to the *Chevron, Corp. v. Donziger et al.*, Case No. 11-0691 (LAK) (S.D.N.Y.) for identifying and email usage information associated with my Hotmail address. I am not a defendant in that case. I also received notice from Google and Yahoo! about other subpoenas in the same case issued in the District Court for the Northern District of California seeking information about Gmail and Yahoo! addresses of mine. I am now moving to quash the subpoena issued to Microsoft for information associated with my Hotmail account. I am separately moving to quash

the subpoenas seeking my Gmail and Yahoo! account information in the District Court for the Northern District of California.

4. I am a full-time independent journalist, as well as an environmental and human rights activist.

5. I provided professional public relations services to environmental activists and lawyers working in the Ecuadorian Amazon from 2005 to 2010, and continue to perform these functions occasionally on a volunteer basis. My roles have included providing translation services, editing newsletters, serving as a public spokesperson, managing international press relations, planning special events, and coordinating press conferences, among other activities.

6. I estimate that I have had my Hotmail email address since 2005. I have used my Hotmail account to engage in both personal and professional communications for approximately seven years. It is important to me that Chevron not have access to all my email usage information and locations during that time period.

7. Keeping my Hotmail account and location information private is very important to me for personal and professional reasons. I am a professional journalist and maintaining journalistic confidentiality regarding my communications and locations has been, and continues to be, an important part of my job.

8. During the course of my environmental and human rights activism work in Ecuador, I have been subjected to physical threats and believe that my life and family's safety have been endangered. I believe that the threats against me were due to my role in the public environmental advocacy campaign against Chevron.

9. I feel harassed by Chevron's attempt to obtain my email usage records and feel that it violates my rights.

10. I know other people who have been harassed because of their environmental advocacy work against Chevron.

11. I know other people who have stopped participating in or have decided not to participate in advocacy against Chevron because they fear harassment and retribution.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 31 2013.

Pisancha @ Hotmail.com
PIRANCHA@HOTMAIL.COM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CHEVRON CORP.,

Plaintiff,

-against-

1:12-md-65 (LAK)

STEVEN DONZIGER, et al.,

Defendants.
----- X

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge*.

Three individuals or entities identified only as JOHN DOES and as the owners of three specific email addresses – simeontegal@hotmail.com, mey_1802@hotmail.com, and lupitadeheredia@hotmail.com – move to quash a subpoena served by plaintiff in aid of an action pending in the Southern District of New York¹ on Microsoft Corporation.

Facts

The subpoena seeks production of documents related to the identities of the users and the usage of thirty email addresses, including those allegedly owned by the three JOHN DOES. The motion is supported in part by a declaration of “JOHN DOE (OWNER OF SIMEONTEGEL@HOTMAIL.COM),”² which is signed in cursive writing

¹

Chevron Corp. v. Donziger, 11 Civ. 0691 (LAK).

²

Dkt. 2-4.

“simeontegel@hotmail.com.” A declaration of a law clerk with an organization that is providing the movants with legal representation states that “[a] copy of the declaration with the account holder’s true name and signature is on file with” her office.³ The alleged owner of the simeontegel@hotmail.com account avers that he has filed the “declaration under [his] email address because [he] wish[es] to protect [his] rights to free speech and participation in associational activities. [He] also wish[es] to avoid making moot these very issues, which [he] ha[s] raised in this motion.”⁴

Chevron, for its part, believes it knows the identities of the owners of the email addresses of the three JOHN DOES on whose behalf the motion originally was made.⁵ Its memorandum points out the following:

“In this case, accordingly, the Microsoft subpoena does not affect the Does’ right to anonymous speech because Tegel, Yopez, and Heredia—the Does—are not anonymous. That is of their own doing: Tegel, Heredia, and Yopez used their names or initials when creating the addresses associated with their email accounts. And they have long publicized their use of these particular email addresses and their association with the LAPs. Tegel signed emails and wrote letters to news outlets using his name. Exs. 3, 5. Indeed, a Google search of ‘Simeon Tegel’ returns, as its second result, Tegel’s personal website, which prominently lists his Hotmail address. Ex. 12. Heredia gave assignments to the LAPs’ interns. Ex. 9. And Yopez participated in radio interviews about her involvement in the LAPs’ public relations

3

Dkt. 2-2, ¶ 5.

4

Dkt. 2-4, ¶ 2.

5

Movants, it should be added, have submitted a second JOHN DOE declaration with their reply papers, this one of the alleged owner of the pirancha@hotmail.com account. This email address appears to be that of Rodrigo Wampakit of Maruma, Ecuador. See <http://chapaik.freservers.com/> (last visited Feb. 11, 2012). The Court need not consider this declaration because it was filed for the first time in reply. See *State Farm Mut. Auto Ins. Co. v. Cohan*, 409 Fed.Appx. 453, 456 (2d Cir. 2011) (affirming district court’s exclusion of affidavit first filed in reply as belated); see also *Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir. 1993) (“Arguments may not be made for the first time in a reply brief.”).

efforts. Ex. 13. Through their very public activities, the Does have affirmatively chosen *not* ‘to remain anonymous.’ *McIntyre [v. Ohio Elections Comm’n]*, 514 U.S. [334,] 342 [(1995)].”⁶

Given the failure of the JOHN DOE movants to identify themselves in court papers, the Court issued an order to show cause “why they should not be required to submit to the undersigned affidavits or declarations revealing to the Court their true identities which will be filed under seal unless and until the Court otherwise orders.”⁷

The JOHN DOE movants have responded that they should not be obliged to inform even the Court – alone, under seal – of their identities because (1) Federal Rule of Civil Procedure 10(a) does not literally require identification of the JOHN DOES in the caption,⁸ (2) Chevron asserts that it knows the identities of the JOHN DOES, thus satisfying the conceded purpose of Rule 10(a) “to apprise parties of who their opponents are and to protect the public’s legitimate interest in knowing the facts at issue in court proceedings,”⁹ (3) there is no need to identify the JOHN DOES for purposes of applying the rules of former adjudication because no one now claims that they are

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Dkt. 35, at 14.

7

Dkt. 41, at 2.

It added that the Court “well understands that the question whether the ‘John Does’ identities should be revealed to Chevron or more broadly is distinct from the question whether the Court should be so informed and does not intend to address that issue – which is implicated by the pending motion – on this order to show cause.”

8

Dkt. 43, at 1.

9

Id. (quoting *Doe v. Shakur*, 164 F.R.D. 359, 360 (S.D.N.Y. 1996) (internal quotation marks omitted)).

trying to relitigate a matter previously decided,¹⁰ and (4) there is no need to identify the JOHN DOES to enable a prosecution for perjury or making false statements as there is no suggestion that the declaration submitted anonymously on this motion is false.¹¹

Discussion

The position of the JOHN DOE movants with respect to identifying themselves to the Court is entirely unpersuasive.

As an initial matter, they acknowledge that Rule 10(a) is intended “to apprise parties of who their opponents are and to protect the public’s legitimate interest in knowing the facts at issue in court proceedings.”¹² Their contention that this purpose is served here because Chevron “asserts” that it knows the identities of the movants is very wide of the mark. Asserting a belief and knowing a fact are two quite different things. Moreover, facts typically are not proved in litigation by assertions of belief. Evidence is required. Thus, the first conceded purpose of Rule 10(a) is not served by proceeding anonymously where the adverse party believes that it knows the anonymous litigants’ identities. Nor is its purpose of serving the public interest. But this is neither here nor there for purposes of the order to show cause, as that concerns only the question whether the Court should have the information.

Second, no comfort may be taken from the claim that copies of the two DOE declarations bearing the true names are in the hands of the advocacy organization that is providing

¹⁰

Id. at 2.

¹¹

Id. at 3.

¹²

Id. at 1 (quoting *Shakur*, 164 F.R.D. at 360 (internal quotation marks omitted)).

the declarants with legal representation. There simply is no way of knowing whether those declarations would be available should the identities of the declarants or the veracity of their allegations become important at some unpredictable future time when that information might prove pivotal for former adjudication or criminal law purposes.

Third, courts have important institutional reasons that require that they know the identities of litigants before them even where there are good reasons for litigants to proceed anonymously vis-a-vis the public. One consideration is that our jurisdiction is limited by Article III of the Constitution to cases and controversies – actual live disputes between real adversaries. Without knowing the identities of the DOE movants, the Court simply cannot be certain that it is the true owners of these email accounts who are pressing this motion as distinguished, perhaps, from an advocacy group that wishes to use the existence of the subpoena for a broader purpose of its own. Another is the Court’s obligation to “keep informed about the judge’s personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge’s spouse and minor children residing in the judge’s household” in order to discharge the judge’s duty to disqualify him- or herself in appropriate circumstances.¹³ Knowing the identity of the litigants before the Court is essential to discharging that obligation.

In the last analysis, at least part of what is going on here is reasonably clear. The JOHN DOE movants’ claims that they fear that their expressive and associational activities could be chilled if their names were publicly associated with their email addresses is shaky at best in light of the email addresses they chose and the publicity they have received. It does not take a rocket scientist to figure out, as Chevron thinks it has done, that simeontegel@hotmail.com quite likely is

13

CODE OF CONDUCT FOR UNITED STATES JUDGES Canon 3(C)(2).

owned by Simeon Tegel, mey_1802@hotmail.com by Maria Eugenia Yepez,¹⁴ and lupitadeheredia@hotmail.com by Lupita (or Guadalupe) de Heredia.¹⁵ The real concern seems to be something else altogether. As the owner of the simeontegel@hotmail.com account wrote in his “anonymous” declaration, he does not wish to acknowledge his identity because he “wish[es] to avoid making moot these very issues” – *i.e.*, the question whether internet service providers can or should be required in appropriate circumstances to identify the owners of email addresses. But, federal courts have an independent obligation to inquire as to the existence of their jurisdiction, which is non-existent where a lawsuit is moot. The wish to keep the movants’ identities secret as a matter of form where they so likely are not secret in fact and thus to induce the Court to ignore what likely is the reality here is not legitimate and not defensible.

“Courts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities.”¹⁶ “This inherent power . . . extends . . . to a court’s management of its own affairs.”¹⁷ Quite apart from the applicable provisions of the Civil Rules, the considerations discussed above and in the order to show cause make this an appropriate occasion for the use of that inherent

¹⁴

The email address has been published in unique association with Ms. Yepez’s name at least at http://www.juiciocrudo.com/archivos/documento/doc_95_Correo_electronico_de_Pablo_Fajardo_%282_de_abril_2008%29.pdf (last visited Feb. 11, 2012).

¹⁵

Dkt. 39-9.

¹⁶

Degen v. United States, 517 U.S. 820, 823 (1996).

¹⁷

Xiao Xing Ni v. Gonzales, 494 F.3d 260, 267 (2d Cir. 2007).

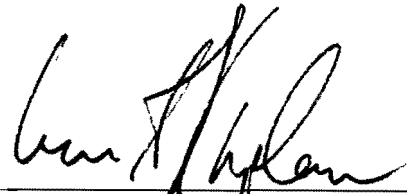
power to ensure that the processes of this Court are not abused, that a moot controversy is not foisted upon it, and that the Court may properly discharge its obligations under the Code of Conduct.

Conclusion

Accordingly, the Court construes Rule 10(a) as requiring that any non-party who files an application for relief in a federal court identify him-, her-, or itself in the initial pleading or motion filed on its behalf. That initial pleading or motion shall be filed publicly in the absence of an order permitting its filing under seal. Pursuant to Federal Rules of Civil Procedure 1, 10(a), and 16(c)(2)(A), (G), (L), and (P), and the inherent power of the Court, the JOHN DOE movants, on or before February 19, 2013, shall submit to the chambers of the undersigned (1) the original, signed declarations they have filed publicly under anonymous names, and (2) an affidavit or declaration identifying each individual or entity on behalf of which the motion to quash has been made. These documents will be filed under seal unless and until the Court otherwise orders.

SO ORDERED.

Dated: February 12, 2013

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", written over a horizontal line.

Lewis A. Kaplan
United States District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiff,

-against-

Case No. 1:12-mc-00065-LK-CFH

Hon. Lewis A. Kaplan

STEVEN DONZIGER, *et al.*,

Defendants.

REDACTED DECLARATION OF NATHAN D. CARDOZO

1. I, Nathan D. Cardozo, have personal knowledge of all matters set forth in this declaration. If called upon to do so, I could and would testify to all matters set forth herein, as ordered by the Court on February 13, 2013.

2. I am a staff attorney with the Electronic Frontier Foundation, counsel of record for Non-Party John Doe Movants, and licensed to practice law in the State of California.

3. EarthRights International and the Electronic Frontier Foundation represent the owners of the Microsoft email accounts simeontegel@hotmail.com, mey_1802@hotmail.com, pirancha@hotmail.com, and duruti@hotmail.com.

4. [REDACTED]

5. [REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

7. [REDACTED]

8. Attached hereto as Exhibit A is a true and correct copy of the declaration of simentegel@hotmail.com, signed by [REDACTED].

9. Attached hereto as Exhibit B is a true and correct copy of the declaration of pirancha@hotmail.com, signed by [REDACTED]

[REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 19, 2013.


NATHAN D. CARDOZO

Exhibit A

[Redacted]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-mc-65

Hon. Gary L. Sharpe

STEVEN DONZIGER, *et al.*,

Defendants.

**DECLARATION OF JOHN DOE (OWNER OF SIMEONTEGEL@HOTMAIL.COM) IN
SUPPORT OF MOTION OF NON-PARTY JOHN DOE MOVANTS TO QUASH
SUBPOENA TO MICROSOFT INC. SEEKING IDENTITY AND EMAIL USAGE
INFORMATION**

Using my email address, simeontegel@hotmail.com, instead of my actual name, in order to protect my identity pursuant to my rights under the First Amendment and New York law, I declare as follows:

1. I am the owner of the email account simeontegel@hotmail.com. I have personal knowledge of all matters set forth in this declaration. If called upon to do so, I could and would testify to all matters set forth herein.

2. I am providing this declaration under my email address because I wish to protect my rights to free speech and participation in associational activities. I also wish to avoid making moot these very issues, which I have raised in this motion. A true and correct copy of my actual signature for this document resides with my attorneys.

3. On September 12, 2012, I received notice from Microsoft of a subpoena issued in relation to the *Chevron, Corp. v. Donziger et al.*, Case No. 11-cv-0691 (LAK) (S.D.N.Y.) for identifying and email usage information associated with my Hotmail address. I am not a defendant in that case. On September 17, 2012, I received a notice from Google of another

subpoena in the same case issued in the District Court for the Northern District of California seeking information from Google about a Gmail address of mine. I am now moving to quash the subpoena issued to Microsoft for information associated with my Hotmail account. I am separately moving to quash the subpoena seeking my Gmail account information in the District Court for the Northern District of California, as well.

4. I am a full-time journalist. I worked for a non-profit advocacy organization from 2005 to 2008, but prior to and after that period, I worked as a professional journalist. My articles are frequently published in a number of prominent international media outlets.

5. I was involved in an advocacy campaign concerning the environmental impact of Chevron's former oil concession in the Amazon for less than three years, ending in 2008. I was never directly involved in the litigation against Chevron in Ecuador, but performed advocacy on behalf of the communities affected by the activities giving rise to that litigation.

6. I have had my Hotmail email address since at least 1999 and I have used it as my primary address ever since.

7. I almost never used my Hotmail address in connection with my advocacy work concerning Chevron. I had a separate address for correspondence related to that campaign.

8. Keeping my Hotmail account and location information private is very important to me for personal and professional reasons. I am a professional journalist and maintaining journalistic confidentiality regarding my communications has been, and continues to be, an important part of my job.

9. I have used my Hotmail account to engage in personal and professional communications for approximately thirteen years. It is important to me that Chevron not have access to my email usage information and locations during that time period.

10. As a journalist based in Latin America, I work on many stories where my personal security, and that of my confidential sources, is an issue of great concern.

11. Had I known that my email usage information and location would be revealed, my political activity at the time I was assisting with the advocacy campaign related to Chevron would have been chilled.

12. I am no longer active in the advocacy campaign and have not been for some time, but should Chevron gain access to my private email usage records, it would intimidate me and deter me from engaging in activism or litigation against Chevron in the future.

13. Should Chevron gain access to my account information, it would chill my activity more generally as well, knowing that personal information about my email use and location could be revealed concerning any activity that I might engage in. Because privacy and confidentiality is of the utmost importance in my line of work, and my sources rightfully expect our communications will remain confidential, my use of my email account will be chilled if Microsoft releases my account information to Chevron. My participation in future political and activism campaigns will also be chilled should this information be released.

14. I feel harassed by Chevron's attempt to obtain my email usage records and fear further harassment should Chevron gain access to the details of my past involvement in the advocacy campaign against Chevron.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 22, 2012.

Exhibit B

[Redacted]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-MC-00065-LK-CFH

Hon. Lewis A. Kaplan

STEVEN DONZIGER, *et al.*,

Defendants.

**DECLARATION OF JOHN DOE #2 (OWNER OF PIRANCHA@HOTMAIL.COM) IN
SUPPORT OF MOTION OF NON-PARTY JOHN DOE MOVANTS TO QUASH
SUBPOENA TO MICROSOFT INC. SEEKING IDENTITY AND EMAIL USAGE
INFORMATION**

Using my email address, pirancha@hotmail.com, instead of my actual name, in order to protect my identity pursuant to my rights under the First Amendment and New York law, I declare as follows:

1. I am the owner of the email account pirancha@hotmail.com. I have personal knowledge of all matters set forth in this declaration. If called upon to do so, I could and would testify to all matters set forth herein.
2. I am providing this declaration under my email address because I wish to protect my rights to free speech and participation in associational activities. I also wish to avoid making moot these very issues, which I have raised in this motion. A true and correct copy of my actual signature for this document resides with my attorneys.
3. In September 2012, I received notice from Microsoft of a subpoena issued in relation to the *Chevron, Corp. v. Donziger et al.*, Case No. 11-0691 (LAK) (S.D.N.Y.) for identifying and email usage information associated with my Hotmail address. I am not a defendant in that case. I also received notice from Google and Yahoo! about other subpoenas in the same case issued in the District Court for the Northern District of California seeking information about Gmail and Yahoo! addresses of mine. I am now moving to quash the subpoena issued to Microsoft for information associated with my Hotmail account. I am separately moving to quash

the subpoenas seeking my Gmail and Yahoo! account information in the District Court for the Northern District of California.

4. I am a full-time independent journalist, as well as an environmental and human rights activist.

5. I provided professional public relations services to environmental activists and lawyers working in the Ecuadorian Amazon from 2005 to 2010, and continue to perform these functions occasionally on a volunteer basis. My roles have included providing translation services, editing newsletters, serving as a public spokesperson, managing international press relations, planning special events, and coordinating press conferences, among other activities.

6. I estimate that I have had my Hotmail email address since 2005. I have used my Hotmail account to engage in both personal and professional communications for approximately seven years. It is important to me that Chevron not have access to all my email usage information and locations during that time period.

7. Keeping my Hotmail account and location information private is very important to me for personal and professional reasons. I am a professional journalist and maintaining journalistic confidentiality regarding my communications and locations has been, and continues to be, an important part of my job.

8. During the course of my environmental and human rights activism work in Ecuador, I have been subjected to physical threats and believe that my life and family's safety have been endangered. I believe that the threats against me were due to my role in the public environmental advocacy campaign against Chevron.

9. I feel harassed by Chevron's attempt to obtain my email usage records and feel that it violates my rights.

10. I know other people who have been harassed because of their environmental advocacy work against Chevron.

11. I know other people who have stopped participating in or have decided not to participate in advocacy against Chevron because they fear harassment and retribution.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January ____ 2013.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----- x
CHEVRON CORPORATION,

Plaintiff,

-against-

1:12-MC-65 LAK/CFH

STEVEN DONZIGER, et al.,

Defendants.
----- x

MEMORANDUM OPINION

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LEWIS A. KAPLAN, *District Judge*.^{*}

In 2011, an Ecuadorian court entered an \$18.2 billion judgment (the “Judgment”) against Chevron Corporation (“Chevron”).¹ At about the same time, Chevron brought this action against the Ecuadorian plaintiffs (referred to as the Lago Agrio plaintiffs or “LAPs”) and others in the Southern District of New York (collectively, the “defendants”).² Chevron there alleges among other things that the Judgment is the product of fraud and violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”). The RICO and, to some extent, the fraud claims rest on allegations that Steven Donziger, a New York lawyer for the Ecuadorian plaintiffs, and others based in the United States here conceived, substantially executed, largely funded, and significantly directed a scheme to extort³ and defraud Chevron by, among other things, (1) bringing the Lago Agrio case;⁴ (2) fabricating (principally in the United States) evidence for use in that lawsuit and corrupting and intimidating the Ecuadorian judiciary in order to obtain a tainted judgment;⁵ (3)

^{*} Honorable Lewis A. Kaplan, United States District Judge, Southern District of New York, sitting by designation.

¹ 11 Civ. 0691, DI 168 (Lago Agrio Judgment).

² *Chevron Corp. v. Donziger*, 11 Civ. 0691 (LAK).

³ Amended complaint (“Cpt.”) ¶ 1 (alleging that defendants “sought to extort, defraud, and otherwise tortiously injure plaintiff Chevron by means of a plan they conceived and substantially executed in the United States.”); *id.* ¶ 2 (“The enterprise’s ultimate aim is to create enough pressure on Chevron in the United States to extort it into paying to stop the campaign against it.”).

⁴ *Id.* ¶ 3.

⁵ *E.g.*, *id.* ¶ 145 (“Back in the United States, preparations were well underway for drafting Cabrera’s report [the report of a supposedly independent, court-appointed expert].”); *id.* ¶

exerting pressure on Chevron to coerce it to pay money not only by means of the Lago Agrio litigation and judgment, but also by forcing it to defend against public attacks in the United States and elsewhere based on false and misleading statements;⁶ (4) inducing U.S. public officials to investigate Chevron;⁷ and (5) making false statements to U.S. courts and intimidating and tampering with witnesses in U.S. court proceedings to cover up their improper activities.⁸

In connection with the Southern District action, Chevron served a subpoena issued by this Court on Microsoft Corporation (“Microsoft”). The subpoena seeks information relating to thirty email addresses. The matter is before this Court on motions by three John Does, who claim to own three of the email addresses covered by the subpoena, and the defendants to quash the subpoena.

Facts

The email addresses listed in the subpoena belong to non-parties who allegedly were involved directly or indirectly in the Ecuadorian litigation. The subpoena calls for the production of all documents related to (1) the identity of the users of the email addresses, including “all names, mailing addresses, phone numbers, billing information, date of account creation, account

151 (“While Stratus [LAP environmental consultant] was the primary coordinator of the . . . Cabrera Report, other members of the [LAP’s] U.S.-based team of experts . . . also contributed to the report without attribution in the report or disclosure to Chevron.”); *id.* ¶¶ 353–56; Mastro Decl. [DI 746] Ex. C (hereinafter “Guerra Decl.”).

⁶ Cpt. ¶ 214.

⁷ *Id.* (“And they have taken this pressure campaign to U.S. state and federal agencies, seeking their falsely induced assistance in this racketeering scheme.”); *id.* ¶ 216.

⁸ *Id.* ¶¶ 273-77, 291-300, 311-16.

information and all other identifying information,” and (2) the usage of the email addresses, including “IP logs, IP address information at the time of registration and subsequent usage, computer usage logs, or other means of recording information concerning the email or Internet usage of the email address.”⁹ The time period covered by the request is 2003 through September 2012.¹⁰

In simpler terms, Chevron is requesting that Microsoft produce documents identifying the account holders and their available personal information. Chevron seeks also the IP address associated with the creation of each account and the IP address connected with every subsequent login to each account over a nine-year period. The subpoena does *not* call for the contents of any emails sent or received by any of the thirty email addresses.

To understand the nature of the subpoenaed information, some background on Internet protocols is necessary. “An Internet Protocol address (or ‘IP address’) is a numeric value used to identify the network location of a computer or set of computers on the Internet. Every computer on the Internet needs to have an IP address in order to communicate with other computers on the internet.”¹¹ “IP addresses are allocated to Internet Service Providers (ISPs) in blocks of consecutive addresses out of a worldwide pool ISPs can further delegate these addresses to smaller entities such as businesses, Internet cafes, or smaller ISPs. ISPs can also assign an IP

9

Marx Decl. [DI 38] Ex. 2.

10

Id.

11

Schoen Decl. [DI 2-3] at ¶ 3. The Does submitted with their motion a declaration of Seth Schoen, a Senior Staff Technologist with the Electronic Frontier Foundation in San Francisco, California.

address directly to an individual computer.”¹² “Individual users connect [to the Internet] using different IP addresses depending on where they are.”¹³ “An IP address may identify the network through which a network-enabled device (such as a desktop computer, laptop computer, tablet, or smartphone) is accessing the Internet. When a portable device moves from an Internet connection on one network (the network connection at one’s home, for example) to an Internet connection on another network (a local coffee shop), the IP address associated with the portable device changes to reflect that the device is connected to that particular network.”¹⁴

“Many host computers of websites, including popular web-based email services like . . . Microsoft Hotmail, maintain logs that list the IP address of visitors along with the date and time information. Websites that utilize a log-in feature typically maintain a log of IP addresses and other data associated with the particular user who logged in, such as the date and time of log-in and the duration of time the user visited the website.”¹⁵

Through online services, “[a] user can input a numerical IP address and obtain the registry’s information about the assignee of that IP address, which might be an ISP or other entity. When IP addresses have been allocated directly to an organization that makes use of them [the online services] can sometimes associate an IP address with an exact physical location. . . . On most occasions, however, [the service] will only associate an IP address with an Internet service

¹²

Id. at ¶ 4.

¹³

Id. at ¶ 6.

¹⁴

Id. at ¶ 7.

¹⁵

Id. at ¶ 8.

provider's office, which is often in the same region as its subscribers or users but does not reveal their exact locations."¹⁶ These online services and other sources provide supplementary information about the geographic location "where ISP's operate and where they use particular ranges of IP addresses. . . . For instance, the IP address 199.83.220.233 is easily traceable to San Francisco"¹⁷ Where specific information about the physical location of an IP address is lacking, a litigant who possesses a list of IP addresses "can subpoena subscriber information from the corresponding ISP's for the specific IP addresses and develop a detailed picture of a person's location and movements from that subscriber information."¹⁸

To summarize, if Microsoft still has and were to produce the requested information, Chevron would learn the IP address associated with every login for every account over a nine-year period. Chevron could identify the countries, states, or even cities where the users logged into the accounts, and perhaps, in some instances, could determine the actual building addresses.

Chevron would not learn who logged into the accounts. That is to say that Chevron would know who created (or purported to create) the email accounts but would not know if there was a single user or multiple users for each account. Nevertheless, the subpoenaed information might allow Chevron to infer the movements of the users over the relevant period (at a high level of generality) and might permit Chevron to make inferences about some of the users' professional and personal relationships.

¹⁶

Id. at ¶ 11.

¹⁷

Id. at ¶ 12.

¹⁸

Id. at ¶ 13.

The Southern District defendants and the Does seek to prevent Chevron from gaining access to this information. Two of the Does submitted declarations explaining that they are the owners of the email accounts Simeontegel@hotmail.com and Pirancha@hotmail.com and that they were involved in certain press-related activities in connection with the Lago Agrio litigation and its associated environmental advocacy campaign in Ecuador.¹⁹ They are proceeding as “Does” on the theory that this protects their anonymity.²⁰

In reality, Chevron believes that it knows who owns the email addresses of the Does and many others. For example, in its opposition to the Does’ motion to quash, it explains that “Simeontegel@hotmail.com is apparently an email account of Simeon Tegel, who was from 2005 to 2008 the Communications Director of Amazon Watch, an entity funded and directed by Steven Donziger to facilitate the LAPs’ fraudulent scheme.”²¹ This description of Simeon Tegel is largely consistent with the declaration submitted by the owner of Simeontegel@hotmail.com.

It is relevant also that the Does have submitted no evidence that they are U.S. citizens or otherwise have a strong connection to this country.

¹⁹

DI 45, Exs. A, B.

²⁰

The Does each submitted declarations in connection with the motion to quash. They signed these declarations with their email addresses. The Court ordered the Does to sign their declarations in their own name and to resubmit them under seal. The Court has not shared this information with Chevron and the Does continue to proceed anonymously.

²¹

DI 35 at 5.

Parties' Arguments

The Does have moved to quash the subpoena primarily on the grounds that disclosure of the subpoenaed information would violate their First Amendment rights to (1) anonymous speech and (2) association.²² They argue also that they are entitled to represent the interests of the twenty-seven non-appearing email address owners.²³ The defendants have moved to quash, among other reasons, on privilege grounds.²⁴

Chevron responds that production of the subpoenaed information would not violate any First Amendment rights,²⁵ that the Does lack standing to move to quash with respect to email accounts other than their own,²⁶ that the defendants in the Southern District action do not have standing to move to quash, and that the disclosure would not reveal privileged information.²⁷ Chevron claims also that this information will assist it in prosecuting its claims in the Southern District case.²⁸ For example, the locations of the logins may help Chevron determine what actions

²²

DI 2-1.

²³

DI 42 at 1-4.

²⁴

DI 1 at 6-7.

²⁵

DI 35 at 13-23.

²⁶

Id. at 7-8.

²⁷

DI 36 at 6-7, 14-15.

²⁸

DI 35 at 10-11.

were taken in furtherance of the alleged conspiracy in the United States, which is relevant to counter the defendants' argument that Chevron is urging an improper extraterritorial application of RICO.²⁹

Discussion

Does' Motion to Quash

The Does' First Amendment argument fails because they have not shown any entitlement to First Amendment protection. In any case, they lack standing to move to quash the subpoena on First Amendment grounds.

The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech, or . . . the right of the people peaceably to assemble." The Supreme Court has noted that a textual analysis of the Constitution "suggests that 'the people' protected by the [First Amendment], refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."³⁰ Indeed, as early as 1904, the Supreme Court held that the First Amendment's guarantees of freedom of speech and assembly do not apply to an excludable alien because "[h]e does not become one of the people to whom these things are secured by our Constitution by an attempt to enter, forbidden by law."³¹ Much more recently, the D.C. Circuit relied on this principle in affirming a district court's determination "that the interests in free speech

²⁹

Id. at 11.

³⁰

United States v. Verdugo-Urquidez, 494 U.S. 259, 265 (1990) (analyzing the extraterritorial application of the Fourth Amendment).

³¹

United States ex rel. Turner v. Williams, 194 U.S. 279, 292 (1904).

and freedom of association of foreign nationals acting outside the borders, jurisdiction, and control of the United States do not fall within the interests protected by the First Amendment.”³²

In the related context of the Establishment Clause of the First Amendment, the Second Circuit upheld a U.S. taxpayer challenge to government funding of foreign religious schools on the ground that the Establishment Clause prohibited taxation for religious purposes, no matter where the money was spent.³³ In so holding, however, the Circuit court noted that it could “think of no theory under which aliens would have standing to challenge either a grant [of government aid] or a denial of aid [under the Establishment Clause of the First Amendment].”³⁴

In light of these principles, and in the absence of evidence that the Does are “people to whom these things are secured by our Constitution,” they do not have standing to move to quash the subpoenas on First Amendment grounds either on their own behalf or on behalf of the non-appearing owners’ whose account information has been subpoenaed.

The Does nevertheless argue that they have standing to assert the positions of the owners of the twenty-seven accounts other than their own on the theory that “practical obstacles prevent [them] from asserting [First Amendment] rights on behalf of” themselves.³⁵ But there is neither evidence nor reason to believe that the owners of the other twenty-seven accounts would face

³²

DKT Memorial Fund Ltd. v. Agency for Int’l Dev., 887 F.2d 275, 283–85 (D.C. Cir. 1989).

³³

Lamont v. Woods, 948 F.2d 825, 839 (2d Cir. 1991).

³⁴

Id. at 840.

³⁵

DI 42 at 2 (quoting *Sec’y of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984)).

any practical difficulties in protecting their own interests if they were so minded. Indeed, owners of at least some of these accounts have opposed these subpoenas in the Southern District of New York and the Northern District of California.³⁶

Defendants' Motion to Quash

A litigant's standing to object to nonparty witness subpoenas generally is limited to the assertion of claims of personal rights or privilege.³⁷ The Southern District defendants do not profess to own any of the email addresses and thus assert no personal rights. They do claim that disclosure of the account information and IP logs improperly would reveal privileged information related to the LAPs' legal strategy.³⁸ This argument fails for two reasons. First, the defendants have not identified any communications or material prepared in anticipation of litigation that would be revealed if Microsoft were to release the subpoenaed information. Second, the defendants have not provided any competent evidence indicating that the email addresses belong to any of the LAPs' lawyers or the LAPs themselves.

* * *

³⁶

See, e.g., Chevron Corp. v. Donziger, 11 Civ. 0691 (LAK) (S.D.N.Y.), DI 591, 592, 588; *Chevron Corp. v. Salazar*, 11-mc-80217-CRB (N.D. Cal.), DI 23.

³⁷

Chevron Corp. v. Aguinda Salazar, No. 11 Civ. 3718 (LAK), 2011 WL 2207555, at *2 n.11 (Jun. 2, 2011) (citing *Langford v. Chrysler Motors Corp.*, 513 F.2d 1121, 1126 (2d Cir. 1975)).

³⁸

DI 1 at 6–7.

The Court has considered the movants' remaining arguments and finds them to be without merit.³⁹

Conclusion

For the foregoing reasons, the motions to quash Chevron's subpoena to Microsoft [DI 1, 2] are denied.

SO ORDERED.

Dated: June 25, 2013



Lewis A. Kaplan
United States District Judge

³⁹

The most forcefully argued of the movants' remaining arguments is that the subpoena is over-broad. The Court is not persuaded. Most of what Chevron could learn from the subpoenaed IP logs about the Does' movements would be only at a high level of generality. The subpoena requests account activity information only from the period of the alleged fraud. That the Does claim to have been involved in that alleged fraud for limited periods of time does not mean that Chevron is not entitled to subpoena information that may prove otherwise and be relevant to its case.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-MC-65 LAK/CFH

Hon. Lewis A. Kaplan

STEVEN DONZIGER, *et al.*,

Defendants.

**DECLARATION OF JOHN DOE (OWNER OF SIMEONTEGEL@HOTMAIL.COM) IN
SUPPORT OF NON-PARTY JOHN DOES' MOTION FOR RECONSIDERATION**

Using my email addresses, simeontegel@hotmail.com, instead of my actual name, in order to protect my identity pursuant to my rights under the First Amendment and New York law, I declare as follows:

1. I am the owner of the email account simeontegel@hotmail.com. I have personal knowledge of all matters set forth in this declaration. If called upon to do so, I could and would testify to all matters set forth herein.

2. I am providing this declaration under my email address because I wish to protect my rights to free speech and participation in associational activities. I also wish to avoid making moot these very issues, which I have raised in this motion. A true and correct copy of my actual signature for this document resides with my attorneys.

3. I am, and have always been, a citizen of the United States of America. I hold a valid US passport.

4. I have spent the majority of the nine years covered by Chevron's discovery request living in the United States.

5. I have had my Hotmail email address since at least 1999 and I have used it as my primary address ever since. I use this email address to regularly communicate with other Americans, often from sensitive locations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 8, 2013.

Simeon Tegel @ hotmail . com
SIMEONTEGEL@HOTMAIL.COM

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

-against-

Case No. 1:12-mc-00065 LAK/CFH

Hon. Lewis A. Kaplan

STEVEN DONZIGER, *et al.*,

Defendants.

NOTICE OF APPEAL

NOTICE is hereby given that the Non-Party John Doe Movants, owners of the Microsoft email accounts simeontegel@hotmail.com, mey_1802@hotmail.com, pirancha@hotmail.com, and duruti@hotmail.com, Movants in the above-named case, hereby appeal to the United States Court of Appeals for the Second Circuit, from the Memorandum Opinion denying the Non-Party John Doe Movants' Motion to Quash entered in this action on the 25th day of June, 2013 (ECF No. 50).

Dated this 18th day of July, 2013 at San Francisco, California.

Respectfully submitted,

/s/ Mitchell L. Stoltz

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(*pro hac vice* pending)
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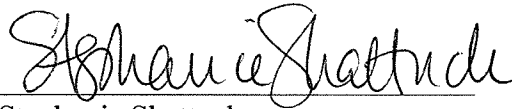
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Counsel for Non-Party John Doe Movants

And, I hereby certify that I have mailed by the United States Postal Service the document to the following non-CM/ECF Participants:

Microsoft Corporation
c/o Corporation Service Company
80 State Street
Albany, NY 12207
Brien Jacobsen <brienj@microsoft.com>

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 18, 2013.



Stephanie Shattuck
Legal Secretary
On behalf of:
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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CHEVRON CORPORATION,

Plaintiff,

-against-

1:12-MC-00065-LAK-CFH

STEVEN DONZIGER, et al.,

Defendants.
----- x

ORDER

LEWIS A. KAPLAN, *District Judge.*

The “John Doe” who claims to be the owner of the email account simeontegel@hotmail.com (“Tegel”) moves for reconsideration of this Court’s order of June 25, 2013, which denied a motion to quash a subpoena served upon Microsoft.

The Court adopts for purposes of this motion movant’s statement of the standard governing motions for reconsideration in this District, viz:

“Reconsideration is warranted where the moving party can show the court ‘overlooked’ facts or controlling law that ‘might reasonably be expected to alter the conclusion reached by the court.’ [citation omitted] In the Northern District of New York, a court may granted a motion for reconsideration where, among other things, new evidence not previously available comes to light, or in order to ‘correct a clear error of law or prevent manifest injustice.’ [citation omitted]”

The Court takes movant’s several points in order.

1. “Tegel” first argues that the Court incorrectly assumed that none of the movants was a United States citizen, which was relevant to the question whether any of them was entitled to the First Amendment protection they claimed. He points out that he in fact is a U.S. citizen although no evidence is submitted as to any of the other movants.

The Court did not overlook or assume anything. “Tegel,” as well as the two other John Doe movants, claimed the protection of the First Amendment both on their own behalf and on behalf of the non-party recipients of the subpoena who never appeared in this Court or

moved to quash it. In order to establish that they were protected by the First Amendment, it was their burden to demonstrate that those on behalf of whom the argument was made were entitled to its protection. They failed entirely to do so. Indeed, even today, the two John Does other than “Tegel” have not claimed that they are U.S. citizens or, for that matter, that their alleged expressive and associational activities occurred or will occur in the United States.

2. The fact that “Tegel” is a U.S. citizen is not “new evidence not previously available.” In the interest of justice, however, the Court will reconsider the motion as to him alone in light of that fact.

3. The claim that the Court’s allegedly erroneous assumption that none of the movants was a U.S. citizen “heavily informed” its decision as to third party standing to challenge the subpoena simply is wrong. The result on that point would have been the same even if all of the movants were citizens.

4. The assertion that the Court based a conclusion that the three movants lacked standing to assert the alleged rights of non-party subpoena recipients only on the factual assumption that the non-parties would not face practical obstacles in asserting their own rights in view of the fact that some of them opposed subpoenas in this Court and in the Northern District of California and that the factual assumption was incorrect. But “Tegel” has this all wrong.

First, it was the John Doe movants who had the obligation to establish their standing to assert the alleged rights of the non-party subpoena recipients.¹ The Court held that they utterly failed to do so. That alone is dispositive.

Second, “Tegel”’s assertion that none of the non-parties challenged the subpoena either in the Southern District of New York or in the Northern District of California is misleading. Laura Belanger and John Rodgers both filed motions to quash the substantially identical Google subpoena in both districts. *Chevron Corp. v. Donziger*, 11 Civ. 0691 (LAK) (S.D.N.Y.), docket items 591, 592; *Chevron Corp. v. Salazar*, 11-MC-80237 (CRB) (N.D. Cal.), docket items

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Indeed, movants each bore “the burden of establishing standing.” *E.g., Hedges v. Obama*, Nos. 12-3176(L), 12-3644 (Con), 2013 WL 3717774, at *11 (2d Cir. July 17, 2013) (citing *Clapper v. Amnesty Int’l USA*, — U.S. —, —, 133 S.Ct. 1138, 1146 (2013)). In order to establish standing, a litigant invoking the judicial power of the United States must demonstrate, *inter alia*, “an invasion of a legally protected interest.” *Hedges*, 2013 WL 3717774, at *11 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Having failed to establish that they had any legal interest protected by the First Amendment, they failed to establish the existence of Article III standing. Moreover, having failed to establish the existence of the prerequisites to third party standing, their claim to assert the “alleged rights of non-party subpoena recipients failed.

18, 19. In addition, Ms. Belanger filed objections to a motion to compel compliance with the Google subpoena in *Chevron Corp. v. Salazar*, 11-MC-80217 (CRB) (N.D. Cal.), docket item 23.

5. This leaves reconsideration of “Tegel”’s position in light of his belated claim that he is a U.S. citizen and thus enjoys the protection of the First Amendment. The Court of course recognizes that the First Amendment affords protection for anonymous speech. For reasons set forth in the supplement to this order that is being filed under seal, that protection is not implicated with respect to “Tegel.”

6. “Tegel” is correct that the First Amendment protects private association. But that protection has limited application to this motion. In the first instance, disclosing the IP addresses associated with “Tegel”’s account would not chill “Tegel”’s association with Amazon Watch because Chevron already is well aware that “Tegel” actively associated himself with Amazon Watch and its founder, Steven Donziger. Furthermore, there are multiple emails currently on the public record that evidence “Tegel”’s collaboration with Amazon Watch.²

The right to private association is inapplicable also because the First Amendment does not shield fraud. Chevron has submitted multiple emails from “Tegel” discussing the organization of media efforts to portray the Ecuadorian litigation as legitimate and the Cabrera report as independent.³ As Chevron explains in its briefing, there is substantial evidence that the litigation was tainted by fraud and, relatedly, that the Cabrera report was not independent. Whether and how the defendants in that action and co-conspirators engaged in a media campaign to pressure Chevron into settling the allegedly fraudulent litigation in Ecuador is quite relevant to Chevron’s RICO claims. The IP address logs are pertinent to exploring this issue.

Not all of the subpoenaed information, however, is significant. Chevron appears to allege that “Tegel” was involved in the alleged fraud only from 2005 through 2008. Disclosure of the IP address logs for the periods before 2005 and after 2008 possibly could yield relevant information, but Chevron has offered no argument why it has any compelling need for those IP logs. Allowing disclosure of the IP address information for any period other than 2005 through 2008 could intrude upon certain protected activities in which “Tegel” may have engaged.

* * *

Accordingly, the motion for reconsideration is granted to the extent that the Court reconsiders the order with respect to so much of the motion by which “Tegel” sought to quash the

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DI 39-3, 4.

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See id.

subpoena insofar as it sought information with respect to the email address simeontegel@hotmail.com and denied in all other respects. On that limited reconsideration, the motion to quash is granted to the extent that Microsoft shall not disclose any of the subpoenaed information with respect to the email address simeontegel@hotmail.com other than for the years 2005 through 2008. The motion to quash is denied in all other respects.⁴

SO ORDERED.

Dated: July 29, 2013



Lewis A. Kaplan
United States District Judge

⁴ The Court notes also that the three “John Does,” including “Tegel,” filed a notice of appeal on July 18, 2013, nine days after “Tegel” moved for reconsideration. The pendency of a motion to alter or amend a judgment under Rule 59, among other post-judgment motions, renders a notice of appeal from the judgment premature until the motion is determined in the district court. *See* FED. R. APP. P. 4(a)(4). While “Tegel”’s motion cites only N.D.N.Y. Rule 7.1, the Court construes Appellate Rule 4(a)(4) to apply to such a motion as well. In any case, the Court has the authority to decide the motion.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHEVRON CORP.,

Plaintiffs,

Case No. 1:12-mc-00065 LAK/CFH

-against-

Hon. Lewis A. Kaplan

STEVEN DONZIGER, *et al.*,

Second Circuit Docket No. 13-2784

Defendants.

AMENDED NOTICE OF APPEAL

NOTICE is hereby given that the Non-Party John Doe Movants, owners of the Microsoft email accounts simeontegel@hotmail.com, mey_1802@hotmail.com, pirancha@hotmail.com, and duruti@hotmail.com, Movants in the above-named case, hereby amend their notice of appeal to the United States Court of Appeals for the Second Circuit, from the Memorandum Opinion denying the Non-Party John Doe Movants' Motion to Quash entered in this action on June 25, 2013 (ECF No. 50), to include the district court's Order granting in part and denying in part the Non-Party John Doe Movants' Motion to Quash entered in this action on July 29, 2013 (ECF No. 57), and the sealed Order entered July 29, 2013 (ECF No. 58, Order Filed Under Seal – Access to Movants' Counsel Only).

Dated this 16th day of August, 2013 at San Francisco, California.

Respectfully submitted,

/s/ Mitchell L. Stoltz

Mitchell L. Stoltz, Esq.

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Nathan Cardozo, Esq.

(*pro hac vice* pending)

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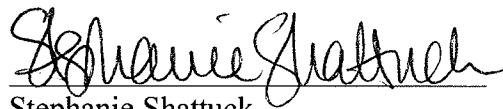
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Counsel for Non-Party John Doe Movants

And, I hereby certify that I have mailed by the United States Postal Service the document to the following non-CM/ECF Participants:

Microsoft Corporation
c/o Corporation Service Company
80 State Street
Albany, NY 12207
Brien Jacobsen <brienj@microsoft.com>

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 16, 2013.



Stephanie Shattuck

Legal Secretary

On behalf of:

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